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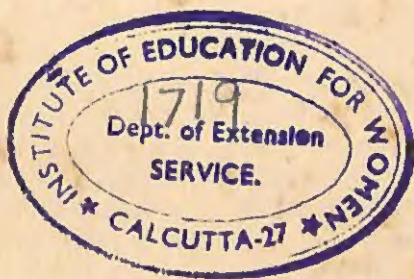


# Elements of Civics

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## PREFACE

THIS book was originally written in 1938, when the subject of Civics for the first time found a place in the curriculum of the Bombay University. A second, slightly revised, edition was issued in 1944, and reprinted several times thereafter. The many changes which have occurred since 1944 have necessitated the present third edition, somewhat enlarged and brought up to date.

Among the changes just referred to is one prescribing the study of Civics for the First Year, instead of the Second Year, classes in the Universities of Bombay State. It is a change of doubtful propriety. Comprehension of the underlying principles of Civics requires a certain maturity of understanding. Moreover, prescribing a subject for study in the University is not always the best way of impressing it on the public mind. Students learn up a prescribed subject for examination purposes, and then forget all about it. There is crying need in our country today for a proper understanding and performance of our civic duties, but it is the adult who must learn those lessons—the housewife who cleans her house and throws the refuse on the public street, the trader who adulterates his goods, the millionaire who dodges the income-tax, the public servant who is remiss or corrupt in the performance of his duties, etc., etc. Even more than into the hands of the student, therefore, the writer would hope that the present book fell into those of the general reader.

My obligations are many, and the footnotes witness them. But I must make special mention of the immense debt I owe to Sir Ernest Barker, my old tutor at New College, Oxford, who introduced me to the study of Political Science, and whose continuing interest in his former pupil has been a source of inspiration. The late Mr H. W. B. Joseph, too, after reading the book in its first edition, wrote words of appreciation and



made a few suggestions, which were carried out in the second edition (which, alas, he did not live to see). The Rev. Dr John Mackenzie, then Principal of Wilson College, Bombay, and Dr G. S. Ghurye, Professor of Sociology in the University of Bombay, made similar suggestions. Mr N. S. Pardasani, now of the Indian Administrative Service, helped me in revising the book for the second edition. To all these gentlemen my warmest thanks are due.

R. P. P.

Poona

16 July 1955

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## CHAPTER I

### THE BIRTH OF CIVILIZATION

§1. **Uncommonness of common things.** Familiarity breeds contempt, and things to which we are accustomed lose their strangeness. We live in houses which protect us from heat and cold; wear clothes suited to different seasons of the year; eat foods which may have come to us from far-off places; travel with speed and comfort; get daily news of what is happening in all parts of the world; and generally, go about our business with a feeling of security. We are annoyed when something goes wrong, baulking us of our expectation: when a train does not arrive in time, or when the electric current fails, and we are, temporarily, plunged into darkness; or when we cannot obtain a supply of the particular kind of food-grain we are accustomed to. We do not consider how extraordinary it is that we should be travelling in trains or aeroplanes at all; should be able to press a button and have a beautiful light; or should turn on a switch and listen to strains of music which are being given out hundreds or even thousands of miles away. How many men, if we only think of it, of how many generations, must have spent their efforts before such a thing as a railway train could come into existence! Even in the present, how many men must be busy, by day and by night, in signalling-rooms, on the railway track, in workshops, in offices, in order that the trains we may be travelling by should run to time and in safety! And what is true of the railway train is also true of the radio, the telephone, the electric light, the water supply, the roads, the books and pictures—everything, in short, which makes life pleasant and beautiful. There is no single article of everyday use for which, if we give any thought to the matter, we shall not feel indebted beyond measure to countless persons of the present generation, and of the generations gone by.



'But', it may be said, 'these are amenities which only a small proportion of our population—the city-dwellers—can enjoy. The poor villager—and 80 per cent of our people live in villages—has none of these. He lives in a mud house; has to draw water from a well; an oil lamp lights his darkness; his food is coarse and lacking in variety; he has only a few utensils and little furniture in his house; he cannot turn on the radio for amusement or instruction.'

**§2. Primitive man : steps in his gradual progress.** It is true that city life has several advantages which are denied to the villager. Even so, the difference between the modern villager and city-dweller is insignificant when compared to that between the present-day villager and his early ancestor. Early man lived much like an animal; he had no house, no clothing, to protect himself from the sun, and the rain, and the inclemencies of weather; some cave gave him shelter, and the bark of trees, or skins of animals, made his clothing. His food consisted of wild fruits or roots which he gathered, or of the flesh of animals which he killed; he lived in continual terror of wild animals more powerful than himself. Gradually, in the course of thousands of years, our ancestors raised themselves above this almost brutish condition. Some early genius made the capital invention of fire; this served to scare away wild beasts at night, to cook food, rendering it more palatable and digestible, and to prepare the way for the next great advance, the discovery and use of metals. With the discovery of metals our ancestors were equipped with better tools than ever before. Hitherto, these had been made of wood or stone; when metals were discovered, they began to be made of copper or bronze, and later, of iron. The use of metals gave our ancestors a great advantage in fighting with other animals. In the meanwhile, however, some of them had begun to make friends with some of the animals, like the dog and the horse, and to keep and rear others, like sheep and cattle. Yet another great discovery was the one that if you put certain grains (which no doubt were originally found in a wild state, but

yet were good to eat) into the ground, and let some weeks pass, plants would grow where the grains had been put and yield many times the amount that had been put in—the discovery, in short, of agriculture. Another capital invention was that of the wheel, the foundation of all land transport and of machinery.

The discoveries or inventions that have been named—fire, metals, domestication of animals, agriculture, wheeled transport—lie at the basis of human civilization. Later discoveries and inventions have no doubt added to our convenience and comfort, but none of them is quite as fundamental as those that have been just mentioned. These discoveries and inventions were made in the long, long distant past, and the names of the discoverers and inventors have been lost to fame. But whoever they were, they have been benefactors of their kind.

And so, when our lowly peasant drives his plough with his team of oxen, eats his frugal meal, drives to the bazaar in his cart, or takes his ease in his mud house, he still is many, many times better off than his very early ancestor. Adam Smith spoke the barest truth when he said that 'the very meanest person in a civilized country could not be provided, even according to what we very falsely imagine the easy and simple manner in which he is commonly accommodated' without the assistance and co-operation of many thousands. 'Compared, indeed,' he goes on, 'with the more extravagant luxury of the great, his accommodation must no doubt appear extremely simple and easy; and yet it may be true, perhaps, that the accommodation of a European prince does not always so much exceed that of an industrious and frugal peasant as the accommodation of the latter exceeds that of many an African king, the absolute master of the lives and liberties of ten thousand naked savages.'<sup>1</sup>

§3. Secret of Man's unique progress : articulate speech. What can be the secret of the unique progress which Man,

<sup>1</sup> Adam Smith, *The Wealth of Nations* (Everyman's edition), p. 11.

alone of all the creatures on the earth, has been able to achieve? It cannot be merely division of labour—which is the point of the passage just quoted from Adam Smith—because there are other creatures besides man—e.g., ants and bees—which also have an elaborate division of labour, but which do not exhibit any progress in their way of living. Scientists and thinkers who have devoted attention to this subject have pointed at various distinctive features of man's make-up. Thus man alone, of all creatures, stands erect, and has hands with which he can handle things (thus getting to know them better than other animals can), and also fashion and use various tools. He has also a much bigger brain than other animals. Above all, he alone, of all animals, is capable of true speech—that is to say, of designating objects with definite names, not merely using sounds to express states of emotion. A chimpanzee, or, for that matter, even a chicken can express by special sounds or gestures the fact that it is hungry or afraid; but it cannot tell its fellows what it wants to eat, when what it wants is not there'.<sup>1</sup> The differentia of man—the quality that marks him off from other animal kinds—is that he can do so. Animals too have their own languages, and can convey to their fellows more than we are apt to imagine. Thus, fowls are said to have twelve different sounds, dogs fifteen, cattle twenty-two, apes twenty.<sup>2</sup> This, however, is nothing compared to the hundreds and thousands of signs—words—which even primitive man uses in communicating with his fellow men. The distinction between the inarticulate cries of animals and the articulate human speech consists in this very use of words, and it is a distinction of the most vital importance. The use of words implies previous analysis of concrete situations, and employment of the resulting concepts to express new situations. Whereas a hen might express by its cry the whole concrete situation involved in the approach of an enemy, a man would say, 'Look! There comes a cat.'

<sup>1</sup> Julian Huxley, *The Stream of Life*, p. 47.

<sup>2</sup> F. Müller-Lyer, *History of Social Development*, p. 49.

And if it is not a cat, but a dog, from which danger is apprehended, he will use the appropriate word to express that meaning. This implies that the speaker has a general idea—a concept—of a ‘cat’, a ‘dog’, of ‘coming’, of ‘looking’. Each of us receives these concepts readymade from society, from the people around us. That is how we get to know what is what—get roughly our knowledge of the world around us. And our thinking—and especially all higher thinking—is carried on through such concepts. It is through them that, for example, we plan some future course of action, or go through some intricate train of reasoning. It is difficult to see how animals could do it. Language thus is an instrument—an essential instrument—of thought. (It is a common experience that some people cannot think without moving their lips.) Then again—and this is a further and most valuable function of language—language enables us to learn from one another—not only from those near us, but those far away; and not only from those now living, but those long since dead. Man’s knowledge thus becomes cumulative; he ‘takes counsel with the dead and gathers wisdom from the ends of the earth’. This is so even in the absence of writing, because knowledge can be preserved even through oral *tradition* (witness the way in which the Vedas have been preserved with us); the accumulation of knowledge is, however, furthered by writing, and later, by printing. This is the grand secret of the supremacy of man. The real distinction between man and animal is to be found, as has been said, not in man, but in mankind.<sup>1</sup> ‘It is not to his individual power and supremacy that man owes his superiority over the animal kingdom, but to his union with other men.’<sup>2</sup> Language is the creation, not of a solitary man, but of a whole community; and, as we have seen, it is the foundation of man’s unique position in the world. ‘If language is ultimately a creation of the intellect, yet hardly less fundamentally is the intellect a creation of

<sup>1</sup> J. D. Bernal, *The Freedom of Necessity*, p. 36.

<sup>2</sup> Müller-Lyer, *op. cit.*, p. 58.



language.<sup>1</sup> That is why our debt to society, past and present, is so immeasurable. The ancient Hindu thinkers had an idea of this debt when they said that a person was born with a threefold debt—a debt to the gods, a debt to his ancestors and a debt to the rishis.<sup>2</sup>

**§4. Individual and Society.** We are now prepared to take a proper view of the relation between an individual man and society. An individual man owes all that he is or has to society. Even bare life would be impossible to him without society. The human child, unlike the young of most animals, is a poor, helpless creature at birth, and requires a long period of careful nursing before it gains sufficient bodily strength to fend for itself. This presupposes some group like the family, and indeed a larger one than the family, because just as a child cannot live without a family, so a small family too cannot live all by itself. In fact, the accounts of primitive people that have been given to us by scholars (like that of the Veddas of Ceylon, or of the aborigines of Australia) do not afford a single example of men living otherwise than in some kind of group larger than the bare family. Then the child, as it grows up, gets its language—and with the language, as explained above, its knowledge of the world—from the people around it; it unconsciously imbibes all their ideas, their patterns of behaviour, their notions of right and wrong. Thus 'every child is made by others in their own image'. After the child has grown into a man, how he will earn his living, what he will do with what he has earned, how he will amuse himself, what opportunities he will have to develop all his latent capacities—all this will depend to a very great extent on society. One thing is clear: that while the life of man in any particular society and at any particular period may not be all that is desirable, it is only in society that he can have any life at all, and any chance of its betterment. Aristotle expressed a profound truth when he said that 'man

<sup>1</sup> R. R. Marett, *Anthropology*, p. 130.

<sup>2</sup> Manu VI. 35.

is by nature a social animal', and further that 'society originated in the bare needs of life, and continues for the sake of a good life'.<sup>1</sup>

The question has sometimes been asked in the past as to how society came into existence. It was a wrong question to ask, because it assumed that there was a time when individual men lived their own separate lives (in a so-called 'state of nature'), and that society came into existence at some later date. The assumption is a false one, and the supposed 'state of nature' is a figment of the imagination. Man and society grew up together. It is now generally recognized that man has descended from some ape-like ancestor, who was gregarious. Indeed, if men had lived separate lives, they could not have developed speech, and could, therefore, not have communicated with one another to form society.

§5. Various forms of society. But though man is essentially a social animal, and has always lived in some kind of society, the nature of the society in which he has lived has not always been the same, but has undergone development in the progress of time. In the earliest times, when men lived by hunting and by gathering fruits, edible plants, etc., they could only live in small groups, because the food available was limited, and if the numbers increased beyond the limit which could be supported with the available food, a number of people had to migrate elsewhere. Later, with domestication of animals, somewhat larger groups became possible, but these groups had to be nomadic, i.e. they had to migrate wholesale, at any rate seasonally, when the pasturelands, which supported the cattle, became exhausted. But if a whole group, consisting of men, women, and children, with cattle, and with all their belongings, has to be on the move, it cannot be a very numerous group. It might, at the most, consist of a few hundreds of persons. With the next stage—the agricultural—there is

<sup>1</sup> *Politics* (Clarendon Press edition), I, 2, 8; I, 2, 9. Aristotle spoke of 'political' and 'state' instead of 'social' and 'society'. But he, like other ancient thinkers, made no distinction between 'state' and 'society'.

a great change. The same piece of land will now support a much larger number of people.<sup>1</sup> Moreover it will support this larger number continuously, without losing its fertility, because men soon find that it is possible, by burning plants, shrubs, etc. on the land, or by putting manure into it, to restore its fertility. Nay more; men find that land can be improved in the course of years. By and by, they also plant trees which will continue to yield fruit for years together. The result is that men now no longer wish, nor find it necessary, to leave their land; on the other hand, they build houses, and settle on the land. The nomadic tribe becomes a village community, or a group of village communities. Henceforward life grows more and more complex. Each family wishes now to hold to its own piece of land. With the development of private property in land, differences in wealth arise, some becoming rich, others poor. The community, which now has a vested interest in its land, must defend it from outside aggression, and so a strong government becomes necessary. Success in war against a neighbouring tribe will bring an addition of territory: the enemy population may be killed, or—more humane alternative—turned into slaves, to work on the land for their masters. The land, carefully cultivated, will yield more than enough for the support of the cultivating population, so that some people can be turned to other activities. Different trades, ministering to man's comfort rather than producing the bare necessities of life, thus arise. Commerce, which, in the form of barter, is not unknown even to primitive people, grows in importance. All this activity is rendered possible by the increased numbers in the community, and itself makes such increased numbers possible. Finally, for one reason or other, large numbers of people come to live in one place, and towns and cities come into existence. It may be from consideration of defence: a hill, with a large

<sup>1</sup> 'It takes four acres of pasture, we are told, to equal, so far as food is concerned, one acre of ploughed land.'—Sumner & Keller, *The Science of Society*, vol. I, p. 58.

plateau, will be a good spot from this point of view, and people will build houses there, and build a wall and dig a ditch round the place. Such, for example, was ancient Rome, built on seven contiguous hills on the river Tiber; and such also were most of the cities of ancient Greece. Or again, a place may become populous for reasons of religion (e.g. Banaras or Jerusalem or Mecca); or it may be a convenient place for industry or commerce (e.g. Bombay or Calcutta or Jamshedpur); or finally, it may draw large numbers to itself simply because it is the seat of the government (e.g. Delhi). But for whatever reason or reasons it may appear—and often cities owe their origin to more than one reason—the emergence of cities makes a great difference to the tenor of a community's life.

**§6. Effects of city life.** For city life necessarily leads to new devices and standards of living. When a very large number of men have to live in a narrow space (which is what a city means), each one cannot just live as he likes, but must have regard to the health and comfort of others. City life, therefore, involves greater discipline. On the other hand, the city provides larger amenities of life. The countryside cannot afford the expense of paved, well-lighted streets, or of pipe-water, as the city, with its large population, can; there is an extended division of labour in cities, so that work, which has to be done in the country by each separate family, e.g. grinding corn, or laundering, or dairying, is done by specialized agencies in cities at a small cost to the individual family; there are, in cities, conveniently situated shops and stores where one can obtain one's necessities and conveniences of life; and there are facilities for instruction, for medical relief, for recreation and amusement. It is true that in migrating from the country to the city there is loss as well as gain; one loses the peace and the quiet, and the fresh, invigorating air of the countryside when one comes to the city. But the gain is so much greater than the loss that there is everywhere a steady trend away from the countryside to towns and cities. The



well-to-do are drawn to them by the prospect of a comfortable life; and the labouring classes by the prospect of employment and amusement. The proportion of people living in towns with a population of 50,000 and above was, with us, 4 per cent in 1931; in 1941 it was 5·7 per cent; and in 1951 8·7 per cent.<sup>1</sup>

Life in a city not only provides greater amenities and comforts: it influences also the minds and characters of the city's inhabitants. The greater contact of men with men tends to quickening of men's wits, polishing of manners, and refinement of taste. All languages bear testimony to this contrast between the rustic and the city-dweller (e.g. *boor* in English; *rustre* in French; *gaondhal* in Marathi; *gamadiyo* in Gujarati).

It is a natural result of the quickening of the spirit in cities that progressive social and political movements should originate in cities.<sup>2</sup>

'In all ages and areas,' says a recent writer, 'from ancient Egypt to modern America, the highest development of human mentality, initiative and achievement has been in urban communities.'<sup>3</sup> 'The city, in any event, is bound to be a controlling factor in the national life. As the city is, so will the nation be. Its population supplies most of the national leadership. Through its daily press the city dominates public opinion far outside its own bounds. . . . It sets the fashions—in morals and in manners as in attire. . . . Hence the saying that although men may make cities, it is equally true that cities make men. He who makes the city makes the nation, and indeed it is the cities of the future that will determine the character of the world.'<sup>4</sup>

<sup>1</sup> The figures for 1931 and 1941 are for undivided India.

<sup>2</sup> 'All advances, all inventions and progress, whether it be in technics, science, art, literature, even agriculture itself, not to mention fashion in dress, emanate from the town.'—Müller-Lyer, *op. cit.*, p. 149.

<sup>3</sup> W. B. Munro in *Encyclopaedia of the Social Sciences*, vol. III, p. 474.

<sup>4</sup> *ibid.*, pp. 481-2.

## CHAPTER II

### THE MEANING OF CITIZENSHIP

§1. **City, citizen, civilization.** We have seen that what we call 'civilization' is closely connected with the city. In fact, the two words have the same root. *Civitas* is the Latin word for 'city' (and is the parent of the latter word), and *civis* is the word for 'citizen'. 'Civil' is what pertains to a citizen; to be 'civilized' is to have the manners of a citizen; 'civilization' is a manner of life resembling that of the city. But while it is easy to see the connexion between 'civilization' and 'city', it is not similarly easy to see that between 'city' and 'citizen'. In order to be a citizen of India, for example, it is not necessary to live in an Indian city, nor are all those who live in our cities necessarily citizens of India. In other words, 'citizenship' has nowadays no special connexion with cities. How has this come about?

§2. **The Greek city-state.** For an explanation we must turn to history. The history of ancient Italy—and earlier than Italy, that of ancient Greece—is a history of city-states. The early Aryan settlers in Greece, like those in India in the time of the *Rigveda*, lived in scattered farms and small villages; but experience of enemies' raids soon taught the necessity of 'housing together', preferably on the slopes of a hill, and of surrounding the houses with a wall. Outside the wall were the spreading fields which supplied the sustenance of the little community. And each little community lived its own independent life, apart from its neighbours, being a little state in itself. This isolation was dictated by geography, for Greece is a mountainous country, with only a few fertile, cultivable plains, between which communication is difficult.

§3. **Intensity of political life in the city-state.** But if each city-community was isolated from its neighbours, this was made up by a rare closeness of association among the

citizens themselves. 'The Greek citizen lived in the public eye. All day during the fine months he was out of doors, talking with his neighbours, acting as a juror, sitting in the theatre, or carrying on his employment. Never was there a society so favourable to the clash of intellects, . . . or the development of political liberty and civic pride.'<sup>1</sup> And it needs little imagination to conceive the feelings of exultation and pride which the citizens of these tiny states must have experienced when, led by Sparta and Athens, they repulsed the mighty forces of the great Persian emperors, Darius and Xerxes, in the famous battles of Marathon (490 B.C.) and Thermopylae and Salamis (480 B.C.). These victories ushered in the famous 5th century, which has been called 'the great age of Greece'—the age in which the Greeks, and especially the Athenians, produced work of such enduring value in architecture, sculpture, drama, philosophy, that it has remained as a permanent exemplar to succeeding generations. By the middle of the 5th century Athens had become a full-fledged democracy. The Athenian citizen attended the Assembly in person, and took part in the making of laws, in election of magistrates, in judicial sentences, in the decision of important questions of policy. He might even, if elected, be called upon to act as a magistrate and perform executive functions. No wonder the Athenian citizen had a peculiar feeling of identity with his city—a feeling that the city was his, and he the city's. The famous funeral speech of the great Athenian statesman Pericles, delivered (430 B.C.) at the funeral of the Athenians who fell in the first campaign of the war with Sparta—the Peloponnesian war—is aglow with this feeling, and with generous pride in his city:

Our government is not copied from those of our neighbours: we are an example to them rather than they to us. Our constitution is named a democracy, because it is in the hands not of the few but of the many. But our laws secure equal justice for all in their private disputes, and our public

<sup>1</sup> H. A. L. Fisher, *History of Europe*, p. 19.

opinion welcomes and honours talent in every branch of achievement, not for any sectional reason but on grounds of excellence alone. . . . Our citizens attend both to public and private duties, and do not allow absorption in their own various affairs to interfere with their knowledge of the city's. We differ from other cities in regarding the man who holds aloof from public life not as 'quiet' but as useless; we decide or debate, carefully and in person, all matters of policy, holding, not that words and deeds go ill together, but that acts are foredoomed to failure when undertaken undiscussed.<sup>1</sup>

The merits, as also the conditions, of democratic government, are well brought out in the claims which Pericles here makes for Athens:—(1) Her government is a government by open discussion, not by the fiat of a despot, and all contribute to the discussion; (2) there is equal justice for all; (3) career is open to talent. At the same time, (4) the citizens study the city's affairs, and do not allow their private affairs to interfere with their public duties.

§4. **Greek citizenship.** Such, then, was Greek citizenship, at its highest. A citizen was a person who was actively associated with the business of the State—was not merely a 'subject', a person passively ruled over. That is how Aristotle defines a citizen: 'He who has the power to take part in the deliberative or judicial administration of any state is . . . a citizen of that state.'<sup>2</sup>

It is true that all Greek cities were not like Athens. There were oligarchic states, like Corinth, for example, which were governed by a small class. There were citizens in these states to whom Aristotle's definition would not apply—persons who had no share in government, but who had all other rights and duties of citizenship, and who certainly *belonged* to the city, and were not merely tolerated in it, like aliens. Aristotle saw the difficulty, and admitted that his definition applied strictly only to democracies. 'Our definition is best adapted', he says, 'to the citizen of a democracy, but not necessarily

<sup>1</sup> A. Zimmern, *The Greek Commonwealth*, pp. 200-2.

<sup>2</sup> *Politics* III, 1, 12.



to other states.' <sup>1</sup> 'There are different kinds of citizens, and he is a citizen *in the highest sense* who shares in the honours of the state.'<sup>2</sup> Aristotle admitted that his definition would need to be modified to cover all cases, but he did not put forward any such modification himself. A definition, or description, which would have covered all cases would have run somewhat like this. 'A citizen is a person who has an intimate relation with the city, such a relation that on the one hand the city is concerned with his general welfare (and not merely with the protection of his life and property), and on the other, can call upon him to make any sacrifice for its sake (not merely the sacrifice of his belongings, in the shape of taxes, but even the supreme sacrifice of his life, in the shape of military service).' This relation is at its highest and strongest when the citizen has a share in the government, i.e. when the government is democratic, so that the citizen has a sense of being at one with the city. It is occasionally possible that the citizen will have this sense even under a monarchy or dictatorship or oligarchy; but it thrives best in democracy, and in other cases its quality is usually of a lower order.

A citizen in ancient Greece was thus a person who not merely resided in the city—even slaves, and aliens, and women and children did that—but one who shared in the government of his city, or at any rate had peculiar rights and duties in his city—which, let us remember, was also his state.

§5. **The country-, or territorial, state.** But there are other kinds of state than the Greek city-state. In fact the city-state is exceptional; the more normal form is what, in contrast with the city-state, may be called the 'country-state', or the 'territorial' state—i.e. the state which does not consist merely of a capital city and a few square miles of fields around it, but comprises a fairly large area. Such states arise through amalgamation of neighbouring tribes—who, as has already been seen, have settled down on the land in village communities

<sup>1</sup> *ibid.*, III, 1, 10.

<sup>2</sup> *ibid.*, III, 5, 9 (Italics ours. 'Honours' means 'offices').

—to form a small kingdom, and then by the union of small kingdoms, in one way or another, into a bigger kingdom, and so on, until we reach the stage of the big states of history and of the present day. The trouble with the big states in early times is that it is difficult to hold them together in the absence of means of rapid communication. The government at the centre cannot act with any rapidity in the outlying parts, which have therefore to be left largely to themselves. Again, because of want of easy communication, the people of the different parts do not come into contact with one another, and there is little chance of their developing a common sentiment. A man of genius may be able to hold the state together for some time, but its tendency is to break up. It is only in comparatively recent times, with the development of good roads, and still more with that of the railway and the telegraph, and the wireless, that big states have been placed on a secure footing.

§6. **Citizenship in the territorial state.** When we speak of 'citizenship' in relation to a big territorial state, we do so by a natural extension of the idea of citizenship in the Greek city-state. A citizen is a person who has some share in the government of the state (say in the form of the right to vote), or at least one who has certain peculiar rights, and is liable to certain peculiar duties, in the state. The *idea* or the meaning of citizenship is the same in either case, but as the body of citizens is larger in the territorial state the practical working is likely to be different. And the body of citizens in the territorial state is larger, firstly because of its larger size, and secondly, in the case of the modern state, because it admits to citizenship several classes of persons who were excluded from it in ancient times. In ancient times, the disagreeable work of society fell to the lot of slaves: these were almost rightless, and were excluded from the circle of citizenship. At the present day slavery has almost disappeared from the face of the earth. Again, in ancient times, women had no share in citizenship. But women too have now been admitted to equal political rights with men in almost all civilized countries.

§7. **City-state and territorial state compared.** In human affairs, what is gain from one point of view is not seldom accompanied by loss from another. The territorial state is an advance on the city-state inasmuch as it implies wider co-operation—inasmuch as it brings a larger area, and a more numerous body of men, into a 'peace-group'. The city-states were smaller—(Athens, one of the largest of Greek city-states, is estimated to have had a total population of 300,000 only); and they were constantly at war with one another. On the other hand, the citizens of the city-states were knit more closely together, and had a more lively patriotism than those of the territorial state. The loyalty which in the city-state was concentrated on the state, finds other objects in the territorial state, and especially in the *modern* state, in which, owing to the complexity of modern life, there are many claimants to the citizen's loyalty.

§8. **The Indian village community.** We have seen how territorial states were formed by the amalgamation of village communities. Until recently, even big kingdoms and empires were in reality not much more than loose federations of village communities, which were for the most part left to themselves, so long as they paid the customary taxes.<sup>1</sup> Thus the true centre of peoples' lives continued to be the village. In India, for example, the village maintained a vigorous, independent existence from the most ancient times down to the 19th century. The village and the village headman (*grāma* and *grāmanī*) are mentioned in the *Rigveda*; the Buddhist *Jātakas* (6th or 7th century B.C.), the *Arthashastra* of Kautilya (3rd century B.C.), Manu, Vishnu and other Smritis, and numerous inscriptions from the 2nd to the 12th century A.D., all evidence the continuous and vigorous life of the village community.

<sup>1</sup> 'Large empires of a mediaeval stationary type of civilisation and inhabited by diverse tribes, like the Chinese Empire, have held together, only because the Central Government has wisely let the rural areas alone, giving to the people of each district freedom to live their lives according to immemorial usage if they supplied the fixed quota of local troops and their fixed share of the revenue of the State.'—Jadunath Sarkar, *Mughal Administration*, pp. 14-15.

The headman (variously styled as *grāmanī*, *grāmādhīpa*, *grāmakūta*, *grāmapati*, *pattakila*—from which, it seems, the modern word 'Patil'—*grāmabhojaka*) seems to have been sometimes hereditary, and sometimes a nominee of the king.<sup>1</sup> By the side of the headman, there was as a rule an assembly, consisting in some cases of all the male adults of the village, in others of the village elders only. The functions of these village authorities were executive and judicial. The headman collected the revenues on behalf of the king, and was responsible for the peace of the village.<sup>2</sup> The village could hold property, which it administered for public purposes, such as the maintenance of temples and tanks and gardens; it could regulate markets; and impose taxes and tolls. It could also exact forced labour from the villagers.<sup>3</sup> As regards judicial functions, it could decide civil suits, and petty crimes, more serious crimes being reserved for the king.<sup>4</sup> Some South Indian inscriptions show the assembly electing various committees for its different functions, and there is mention of a lady on one of the committees.<sup>5</sup> One inscription gives elaborate rules for the election of members of these committees, which even the twentieth century will find it difficult to improve upon. The village authorities were generally left undisturbed in the internal management of the village, but their accounts were supervised from time to time by royal officers, and they seem to have been liable to fine by the king for dereliction of duty.<sup>6</sup>

Village self-government bred a strong feeling of loyalty to the village, and disloyalty to the village (*grāmadroha*) seems to have been a recognized offence just like *rājadroha* (disloyalty to the king).<sup>7</sup> Village communities have in fact

<sup>1</sup> R. C. Majumdar, *Corporate Life in Ancient India*, p. 66.

<sup>2</sup> *ibid.*, p. 65.

<sup>3</sup> *ibid.*, p. 69.

<sup>4</sup> *ibid.*, p. 63. See also the same author's *Ancient India*, pp. 449-53.

<sup>5</sup> *ibid.*, p. 76.

<sup>6</sup> *ibid.*, p. 81.

<sup>7</sup> *ibid.*, p. 71; Matthai, *Village Government in British India*, p. 35.



been called 'little republics', in the famous description of them by Sir Charles Metcalfe in a minute of 1830:

The village communities are little republics, having nearly everything they can want within themselves, and almost independent of any foreign relations. They seem to last where nothing else lasts. Dynasty after dynasty tumbles down; revolution succeeds to revolution, . . . but the village community remains the same. . . . This union of the village communities, each one forming a separate little state in itself, has, I conceive, contributed more than any other cause to the preservation of the people of India, through all the revolutions and changes which they have suffered, and is in a high degree conducive to their happiness, and to the enjoyment of a great portion of freedom and independence.<sup>1</sup>

A little earlier than Metcalfe, in 1819, Mountstuart Elphinstone, then Commissioner of the Deccan, gave a similar description of village communities in the Deccan in his Report (to the Supreme Government) on the Territories conquered from the Peshwa:

These communities contain in miniature all the materials of a state within themselves, and are almost sufficient to protect their members, if all other governments were withdrawn. . . . The head of each village is the Patail, who has under him an assistant, called a Chaugula, and a clerk called a Coolkurnee (Kulkarni). There are besides 12 village officers, well known by the name of the Barra Bullootee (Bara Balute).<sup>2</sup>

The Bara Balute, though not the same everywhere, included the carpenter, the potter, the washerman, the barber, the astrologer, the watchman and other village functionaries. All the functionaries were remunerated either by a rent-free grant of land or by a definite share from the individual harvest of every villager, supplemented in each case by various occasional perquisites.<sup>3</sup>

<sup>1</sup> Quoted in Elphinstone, *History of India*, pp. 68-9.

<sup>2</sup> Elphinstone, *Report* (2nd edition, 1872), p. 15.

<sup>3</sup> Matthai, *op. cit.*, pp. 16-17.

° 'Each one forming a little state in itself.' The village community was to the Indian what the city-state was to the ancient Greek, and the village was the field in which the spirit of his citizenship was displayed.

§9. **Group life.** Just as the village community was left largely to itself, because, owing to absence of speedy communication, the arm of the government could not easily reach everywhere, so also, and for the same reason, other groups also were allowed to function with the barest amount of regulation by the government. For the state, as has been said, is a 'society of societies'; it is not, that is to say, as if there was nothing intervening between the individual citizens and the state; but the state is a big society consisting of numerous other societies, large and small, of which, too, the individual citizens are members. Even the city state, small as it was, was not without such societies; but in the large territorial state, and especially in the modern state, with its enormous populations and their growing needs and interests, they are more numerous than ever before. Thus an individual citizen is at one and the same time a member of a family, of a caste or class, of some professional or vocational association, of one or other religious group, of a sporting or recreational club, of some political party, of a municipality or Local Board, and so on. He is also, of course, a member of his state. Now, he may on occasion find himself pulled this way and that by his loyalty to one or other of the various groups to which he belongs, and by his loyalty to the state. His duty to his state may require him to do something which appears to be detrimental to his family or his class or caste or political party; what should he do in such a case? Obligations to the latter kind of group seem so obvious: they lie near; those to the state seem distant and hazy. The conflict is particularly perplexing when it occurs between one's duty to the state and to one's religious group or to a group which is wider even than the state, or whose membership cuts across state boundaries.

**§10. Groups and the modern state.** The situation that has been described is peculiar to the modern world. It did not arise in primitive society, because in that microscopic society there were no groups, except the family, intervening between the individual and the society, and the individual's life was regulated by strict custom from birth to death; nor could it arise in the city-state, where the city was ever present to the mind of the citizen; nor again in the Middle Ages of Europe, because although groups of all kinds—religious, economic, cultural—flourished at the time, there was no strong state confronting the groups: each group 'made its own law and order in a time of general self-help, and the authority of the state, as represented by the king, was penned into a corner'.<sup>1</sup> The state of things with us in India seems to have been somewhat more advanced, because though the constitutions of the gilds (*srenis* as they were called) were expected to be confirmed by the king, he was also expected to interfere if a gild engaged in prejudicial activities, or if a member was treated unjustly, or in case of conflict between one gild and another.<sup>2</sup> The situation in the modern world has arisen because we have now strong states confronting strong groups; so that neither can the state swallow up the groups (as it tried to do in France after the Revolution of 1789), nor the groups reduce the state to nullity (as they came near to doing in the Middle Ages in Europe, and as, according to one school of thought—the Anarchist—they should do now). The need is preeminently for reconciling the claims of the groups with those of the state, for 'ordering one's several loyalties'. We must see whether this is possible.

**§11. Groups distinguished : organized and unorganized.** If we consider the nature of the groups we belong to, we shall find that they are not all of the same character. Some of the groups, e.g. a recreational club, have their 'rules and regulations', and their 'secretaries' and 'treasurers' and

<sup>1</sup> Sir Ernest Barker, *Social and Political Theory*, p. 13.

<sup>2</sup> Majumdar, *op. cit.*, pp. 11, 19, 23.

‘Committees of Management’, etc. In other words, they are *organized*, i.e. they have definite *organs*, or *instruments*, for carrying out their objects. At first sight, it seems self-evident that if a group of persons is to work smoothly, it is necessary that it should be thus properly organized—that it should have a set of rules in black and white, so that every member knows what he is expected to do, and that there should also be some definite persons whose duty it should be to see that the rules are followed. On a little thought, however, we can see that this need not always be so. If I were to form a small group with half a dozen friends for playing, let us say, tennis, we need not draw up a set of rules and regulations, and appoint a secretary, etc. There are well-known rules of the game, and there is a tacit understanding among us that we play on the basis of these rules, and leave other things to the good sense of the members. Each one observes this tacit understanding. If someone acts selfishly, and plays a game, shall we say, out of his turn, he is looked down upon by the rest, and if that kind of conduct is persisted in, it may involve his expulsion from the group. Now what happens in our small group happens also in primitive society. This is a small society, consisting of kinsmen, who have been brought up in the ways of the society, and therefore know how they should behave. The society has its rules—no society can do without them—but they are rules of custom. They are instinctively obeyed, and if there is a breach of any rule, the culprit incurs general disapprobation, and in case the breach is a serious one, may be made to suffer in person, or may even be expelled from the society. Organization becomes necessary when the group becomes more numerous: when our tennis club, once consisting of half a dozen friends, admits more members; or when a tribe combines with one or more other tribes, with their different customs, to form a bigger society. No big group can function properly without organization, and none can be formed unless the would-be members are prepared to be organized.



**§12. Other distinctions.** There are other distinctions among groups besides the one turning on organization. Groups are formed to fulfil certain needs, and not all needs are of equal importance or scope. A tennis club differs, from this point of view, from a trade union, or a political party. Then again, groups differ according to the basis of their membership; membership of most of the groups to which we belong is voluntary, but there are groups—the family, for example—of which the membership is determined by birth, and is thus not a matter of one's will.

**§13. Necessity of the state: its characteristic features.** Now, if the different groups to which we belong—large or small, organized or unorganized, voluntary or compulsory—are to work in peace and without friction, is it not necessary that together they should form one big group and set up an agency which will protect them all from violence, and also resolve any conflicts that may arise among them? Without such agency, there would be nothing to prevent the thugs among society from banding together to exploit the peaceful citizens; nothing also to prevent group clashing with group. To be effective, this big group must necessarily take in every person, and the agency set up by it must be able to control all persons and groups of persons. Such a group is the state; and the agency set up by it is the Government. Having come into existence primarily to afford protection to persons living in a certain territory, and to compose differences among them—(both among individuals and among groups)—the state can proceed further, and use its powers and resources for the improvement of the life of the people, so that it ceases to be a group with some limited purpose, and its aim comes to be the all-round welfare of its people.<sup>1</sup> The state is thus

<sup>1</sup> Compare the famous passage in Burke's *Reflections on the French Revolution* (World's Classics, vol. II, pp. 105-6). 'The state ought not to be considered as nothing better than a partnership agreement in a trade of pepper and coffee, calico or tobacco, or some other such low concern . . . It is to be looked on with other reverence; because it is not a partnership in things subservient only to the gross animal existence of a temporary and perishable nature. It is a partnership in all science; a partnership in all art; a partnership in every virtue, and in all perfection.'

° a group of a peculiar kind: (1) Membership of the state is compulsory for everyone within its territory. A man cannot say whether he will or will not be a member of the state, as he *can* say that he will or will not be a member, say, of a recreational club. (2) The aim of the state is not a limited one like that of other groups. (3) The state is not subject to control by any other authority, as the other groups are subject to the control of the state. This last characteristic of the state is called its 'sovereignty'.

**§14. Criticism of the state.** The state is a territorial group; and it is sovereign in its territory. These features of the state have occasioned criticism in certain quarters. 'Why should the state', the critics ask, 'claim supremacy over other groups?' It is just like other groups; and maybe, not as important as some others. It is our trade union, for instance, which secures to us decent wages and decent conditions of work; the religious organization which gives us solace in times of tribulation; the 'Art Circle' which transports us into the magic world of beauty. These groups are surely as important as, or even more important than, the state? And after all the state is confined to its own territory, whereas the membership of some of the other groups is world-wide. As a matter of fact the whole world is now one society. Events in one part of it have effects in far distant places. 'There may be bank failures in London or Paris as a result of a crisis in New York or an indifferent rice harvest in India.' The wonderful progress that man has achieved is not the work of only one people, but of all mankind. We may use an alphabet which was invented in Egypt or Babylonia, and think thoughts conceived by the ancient Greeks.<sup>1</sup> That being so, is it not unfair to the other groups—

<sup>1</sup> An eminent living scholar remarks: 'Let us consider the historical implications of this volume. It is printed on paper invented by the Chinese early in the Christian era and introduced into Europe in the twelfth and thirteenth centuries. The letters were devised by the Phœnicians, adopted by the previously illiterate Greeks, modified by the Romans, and altered ... by the medieval scribes. ... The language is based upon a western German tongue used by the Teutonic invaders of England in the fifth century. ... Printing was a Dutch and German innovation made nearly

smaller groups like the family, the trade union, etc. on the one hand, and the great group of Humanity on the other—to make much of the state, and to insist that the citizen should be loyal to it above everything else?

**§15. The criticism considered.** There is some point in these criticisms, and they should put us on our guard against thinking—as some thinkers have done—that the state is all in all. But as we should not deify the state, neither should we denigrate it. Humanity may form one society, but it is as yet unorganized, which means that there is no guarantee that the rules of that society will be obeyed, or that those who violate them will be punished. The widest organized society which men have been able to realize so far is the territorial society—the state. To decry the state as narrow because it does not cover the whole world is to decry the real good because it is not the unrealized better. So also, to exalt other groups in comparison with the state on the ground that the former serve greater values of life is to forget that those groups would not be able to function except for the state. The fruit and flowers in a garden are more valuable than its fencing; but in a world which is full of wild beasts and human marauders, would the fruit and flowers be allowed to grow in the absence of the fencing? And the state, to continue the metaphor, is not mere fencing; it is that, and water, and manure as well.

**§16. Conclusion: primacy of the state.** Our conclusion must, therefore, be that the citizen as a rule owes a primary loyalty to the state. A citizen of the modern territorial state who realizes the meaning and the place of the state will readily identify himself with it, and make its purposes his own, just like the citizen of the ancient city-state. The meaning of citizenship, in short, is the same, in the modern as well as in the ancient world.

And civics is the study of citizenship.<sup>1</sup>

five hundred years ago. . . . These are but a few of the ways we unconsciously perpetuate the past.'—J. H. Robinson, *The Ordeal of Civilization*, p. 734.

<sup>1</sup> For scope of Civics, see the appendix on p. 130.

§17. **Use of study of civics.** What, it may be asked, is the use of the study of civics? One, and perhaps the most important, use has just been indicated: that it teaches us to 'order our several loyalties', so that in the midst of the conflicting claims which are being made upon us in the modern world, we may learn to give each claim its proper weight and importance. Philosophy, it has been said, would not be necessary were it not for bad philosophy; and we may say that thinking about citizenship is necessary because of wrong thinking about it. And it is not only for true knowledge that such thinking is necessary, but also for fruitful practice—its natural result. No doubt there have been states, and there has been citizenship, of sorts, for hundreds and thousands of years; there have been strong and efficient states, and there have been weak, nerveless states; states in which citizens have actively, but intelligently, co-operated with the authorities, and in which, therefore, concentrated social power has been used for the citizens' welfare; and states in which citizens have been apathetic, and in which progress has been stunted—all this there has been, and things will run their course in future as they have done in the past, whether we take note of them or not. It is Man's glory, however, that he learns from past experience, and instead of merely letting things take their course, tries to shape that course to his heart's desire. May it not, then, be hoped that a study of civics, with the true knowledge of the rights and duties of citizenship which it imparts, will influence for the better our daily conduct to our neighbours and to the state, so that the democratic constitution which we have given to ourselves will not remain a mere empty shell, and that every citizen of India will in consequence be able to live a fuller and nobler life?

#### APPENDIX I

#### SOME DEFINITIONS

We have so far been using words like 'society' and 'community' without precisely defining them. These, and some other



words like 'Association', 'Institution', etc. are used in various senses in common parlance. It is necessary to distinguish these senses.

All these words are used in two ways: (1) in the abstract, to denote some condition or quality, and again (2) in the concrete, to denote a body of men in the particular condition, or possessing the particular quality.

'Society' in the abstract means 'companionship', 'fellowship', 'the condition of living in association with others'. Thus when Hobbes, the English philosopher, says in his famous book the *Leviathan*, that in the state of nature there is 'no account of time, no arts, no letters, no *society*', etc., he means that *living in fellowship with others* is unknown in the state of nature. By an extension of this primary sense the word is also used to mean the *system or mode of life* adopted by a body of individuals living in fellowship. This is the meaning of the word when we speak, e.g., of 'English society in the 11th century'.

These are abstract uses of the word; in the concrete, the word is used to mean either (1) the *aggregate of persons* living together in fellowship: (as when we speak of 'Society and the individual', or when we say that 'the world is now one society') or (2) merely, any body of men pursuing a common aim or interest (as in the 'Society for the Prevention of Cruelty to Animals', the 'Servants of India Society', etc.). It is clear from this that any number of persons, from, say, half a dozen, to the whole of humanity, may form *a society* (in the concrete).

Community, in the abstract, means primarily (1) the 'quality of being common' (as in the expression 'community of goods', meaning 'common ownership of goods'); then by extension, 'living in common', which makes the word equivalent to 'society', or 'the social state' (as in 'Marriage is the foundation of community'). In the concrete, it means a body of men living a common life (as in 'village community' or 'community project'); and as common life has various degrees or levels, the term may be applied to anything from a village community to a state.

The term is also applied to a body of men who have certain circumstances of race, or religion, or profession, etc., common to them, but not shared by others in the society in which they live. Thus, we speak, e.g. of the Hindu and

Muslim *communities*, or the Jewish *community*, or the mercantile *community*.

Although 'society' and 'community' may at times be interchangeable, 'community', used concretely, seems to have a wider application than 'society', used concretely. We should not, for instance, speak of 'the mercantile *society*' instead of 'the mercantile *community*'. 'The Parsee *community* has produced many eminent leaders of industry.' We should not say that Parsee *society* has done so. When we speak of *society*, that is to say, the reference in our minds is to the institutions which a body of people have in common; this is not so when we speak of a *community*. So we say indifferently that Parsee *society*, or the Parsee *community*, does not encourage early marriages; but separate electorates were formerly demanded, not by Muslim *society*, but by the Muslim *community*.

*Association*, in the abstract, means the act of combining together for a common purpose; in the concrete, it means a body of persons who have combined to execute some common purpose, or to advance some common cause. In this latter use the term would be interchangeable with the term 'society' in the last of its uses mentioned above. 'The *Society* for the Prevention of Cruelty to Animals' might equally well have been called 'The *Association* for the Prevention . . .'.

*Institution*, in the abstract, means the act of instituting or establishing; then by extension, an established law, custom, usage, practice, etc. Thus we speak of the *institution* of property, of marriage, of family, etc. But the word is also used concretely in the sense of an association, e.g. the Institution of Engineers (which might as well have been called the Association of Engineers, or the Society of Engineers).

Finally, we may define the *state*, provisionally, as an independent, organized, territorial society. We have seen how among all the societies, large and small, of which men are members, there is one to which all persons, living in a certain territory, have necessarily to belong; how all other groups have to conform to certain standards of behaviour laid down by it, and are therefore, in a sense, subordinate to it; and how it is itself not similarly subordinate to any other authority. This is the state.<sup>1</sup>

<sup>1</sup> The term 'state' is also applied in some federal states to denote the units of the federation (e.g. in the U.S.A., Australia, and India). Else-

## HOW CITIZENSHIP IS ACQUIRED

There are two ways in which one may become a citizen of a state: one may be either born into such citizenship (in which case one is called a *natural-born* citizen) or one may be *made* a citizen, although not so before (in which case one is called a *naturalized* citizen). Each state determines for itself the circumstances which shall be recognized as creating either kind of citizenship—(natural-born and naturalized). The criterion of birth may have reference to the *status of the parents*; being born of parents who are citizens may, in other words, confer citizenship. (And here again there are several alternatives: *both* parents may be required to be citizens, or the father alone, or the mother alone, may be enough.) Or the criterion of birth may have reference to the *locality* of birth; being born in the territory of the state may, in other words, be sufficient to confer citizenship of that state. The former of these two principles is called the *jus sanguinis* (rule of blood); the latter, the *jus soli* (rule of the land). In most states both these principles are recognized to some extent. Thus, in the U.S.A., children born of Chinese or Japanese parents are American citizens, even though the parents themselves are aliens. On the other hand, children born to American parents while abroad, are also deemed American citizens. It follows that some persons may have dual citizenship. Thus a child born in the United States of French parents would be a citizen of the United States *jure soli* (by the rule of the land), but a citizen of France *jure sanguinis* (by the rule of blood). Dual citizenship also results from a person becoming a naturalized citizen of some other country, when his country of origin does not allow the right of expatriation.

For naturalization, a certain period of residence in the country is usually required. In England and the U.S.A. this period is 5 years. Restraints on the ground of race and colour are also imposed in several states.

where such units are called by other names, such as 'province' or 'canton'. What distinguishes these 'states' from 'state' as defined above is their lack of independence. This was also the case with the so-called 'Native States' (e.g. Hyderabad, Baroda, Mysore, etc.) during the British regime in India.

^ 'Citizenship may be lost, as it may be acquired, in various ways. In most countries, women lose their citizenship by marriage to aliens. . . . In some countries, citizenship is lost by acceptance of office or service under a foreign government; in others, by acceptance of a decoration from a foreign government, by desertion from military service, or by judicial condemnation for certain crimes, or even by long residence abroad even if not followed by naturalization in a foreign state.'<sup>1</sup>

The Constitution of India declares who are to be citizens of India at the commencement of the Constitution: these are persons who have their domicile (i.e. their permanent residence) in the territory of India, and who, or either of whose parents, have been born in India, or who have been ordinarily resident in India for at least five years before the commencement of the Constitution. Persons of Indian origin (i.e. persons who were themselves born in India, or either of whose parents or any of whose grand-parents was born in India), who are residing outside India, are deemed to be citizens of India if they register themselves as such with a consular representative of India. All these persons, i.e. persons who are citizens or deemed to be citizens of India at the commencement of the Constitution, will, the Constitution goes on to say, continue to be such. Other matters, e.g. procedure for naturalization of aliens, are left to be provided for by Parliamentary legislation, which, however, has not yet been undertaken.

<sup>1</sup> W.W. Willoughby, Article on 'Citizenship in U.S.A.' in the *Encyclopaedia Americana*.



## CHAPTER III

### RIGHTS AND DUTIES OF CITIZENS

§1. **Meaning of 'Right'.** What do we mean when we say that a certain person has a *right* to a certain thing, or to act in a certain manner?

1) Two motorists driving in opposite directions on a public road, collide, and there is an 'accident'. Each driver claims that he has a 'right' to use the road. The matter will finally be decided according to law, because there are laws, made in the general interest—(or for the 'common good' as it is generally called in books)—governing the use of roads by motor vehicles (such as that 'vehicles should keep to the left', etc.); and the driver who followed the rules will be declared to have had the right of the road.

'Right' here means a claim to the exercise of a certain power—(in this instance use of the road)—which is recognized and supported by the law.

2) But we sometimes use the word 'right' even when there is no question of its recognition in law. 'Children have a *right* to the love of their parents', and 'friends have a *right* to each other's goods'. The meaning is not that parents can be forced by law to love their children, or that friends can be similarly forced to share their goods with each other. What is meant is rather that society expects parents to treat children with affection, and friends to help each other in need, and that those who behave otherwise will incur odium in society.

'Right' in this case means a claim recognized and supported by society.

On the whole, therefore, we may say that a right is a claim recognized and supported by society, whether expressly by law or otherwise. In the first case the right may be called a *legal* right; in the other, a *moral* right.

The exercise of certain powers by individuals is recognized and supported by society—society maintains certain rights—

because the exercise of those powers by the individual is considered to be in the best interests of the individual, and also in the interest of society in general. Each man has in him certain inborn capacities. When he can develop the best of those capacities, he feels happy: otherwise there is a feeling of frustration and unhappiness. It is only in society that these capacities can be developed. A man may have in him the making of a great musician; but if he has no opportunities of hearing good music, his latent musical powers will not be aroused; and if law or public opinion prevents him from learning music (because, e.g., it is considered that it is beneath his caste or class),<sup>1</sup> his musical powers will remain undeveloped. But it will not be so if society recognizes his right to learn music; his capacity will then have full play; and not himself only, but society also, will gain in consequence, because as a result of his developing his musical talent, more people will be able to hear good music, and some of them will, in their turn, be stimulated to develop *their* own capacities.

**§2. Rights subject to change: natural rights.** As rights are rooted in social opinion, they are subject to change from time to time with changes in that opinion, resulting from the growth of knowledge and experience, and the varying pressure of different classes in society. Rights which were recognized at one time are no longer recognized today. Thus many societies, down to very recent times, recognized a right of property in human beings. Again, in early society, if a man was murdered, his family had the right of making war on the family of the murderer. Neither of these rights—of slavery and of private war—is recognized in present-day civilized societies. Conversely, some rights which were not formerly recognized are recognized today; e.g. the right of women to vote, of Harijans to free entry to all public places, etc. No society can boast of a perfect system of rights.

<sup>1</sup> There is also the reverse case, where a certain matter is considered *above* the caste or class. Thus, in old times, a Śūdra was not permitted to study the Vedas.

Reformers who see that the system of rights in their society is not what it ought to be and who agitate for the recognition of certain rights, often claim them as their 'natural rights', i.e. rights which *ought* to be recognized by society (though actually they are not) because they are necessary for the perfecting of the citizens' 'nature'.

3) This is a third and further use of the term 'right'; but here too 'right' has a reference to social recognition, desired if not actual.

**§3. Rights a matter of opinion, or of force?** It may be objected that the account of 'right' given above is too idealistic, in that it does not take account of the fact that many times 'rights' are simply the claims which some strong class has been able to establish through superior force. Thus, the right, in ancient India, of the three upper classes (*varnas*) alone, to the exclusion of the Śūdras, to study the Vedas; the right of Europeans, in British India, to be tried by European judges only (which led to the famous Ilbert Bill controversy in 1884); the right of the whites in South Africa, today, to reserve certain areas for their own exclusive residence—are not these, and many others, instances of certain classes establishing certain claims through superior force alone? And would not speaking of 'social recognition' be a mere travesty of the facts in such cases?

The objection goes to the very root of social science. It raises the question of the place of force in the cohesion of society. Now, it is true that in the formation of big societies and territorial states, force has played its part. But force by itself cannot sustain a society. You can do anything with bayonets, it has been said, except sit on them. So even if a society *begins* with force, it cannot *continue* with it. The conqueror has to come to terms with the conquered, and as the ruled become more and more conscious of their rights, rights tend to become more and more equal. A distinction may even then be made between one man and another, and a right given to one man and withheld from another (for instance,

the right to vote may be given to one man and not to another); but if so, the distinction will be made on the ground of the difference in the capacities of the two men to contribute to the general good, and not on any irrelevant considerations such as race or class. Distinctions based on such considerations will lead inevitably to conflict and instability.

**§4. Rights and duties.** Rights imply *duties*. In fact, 'rights and duties are the same facts looked at from opposite points of view'. And this is so in two ways. In the first place, to say that *A* has a particular right is the same thing as to say that *B*, *C*, *D*, etc., individually or collectively, have a particular *duty* towards *A*. If, for example, *A* has the right of property in object *x*, others are under a *duty* not to interfere with his use of that object. But in the second place, if *A* has a certain right, inasmuch as rights can be enjoyed only in society, and as society, as mentioned above, cannot make irrelevant distinctions, *A* himself has to respect the same right in others. His right implies not only others' duty towards him, but *his own* duty towards others. His right of property in *x* implies not only that others are under a duty not to interfere with his use of *x*, but that *he* is in turn under a duty not to interfere with others' use of similar objects.

**§5. Fundamental Rights.** Although rights, as has been pointed out, are subject to change from time to time, and from place to place, there are certain rights which all modern civilized societies agree in recognizing. They may be called fundamental rights, in the sense that they are indispensable conditions of a worthy human life. When the United Nations Organization was formed in 1945, one of its objects was declared to be to achieve international co-operation 'in promoting and encouraging respect for human rights and for fundamental freedoms for all'; and in 1950 the General Assembly of the United Nations adopted a 'Universal Declaration of Human Rights', so that 'every individual and every organ of society, keeping this declaration constantly in mind, shall strive by teaching and education to promote respect for

these rights and freedoms, and by progressive measures, national and international, to secure their universal and effective recognition and observance'. The principal rights included in this Declaration are (1) right to life, liberty and security of person; (2) freedom from cruel, inhuman, or degrading treatment or punishment; (3) equal protection of the law; (4) freedom from arbitrary arrest, detention or exile; (5) fair, equal and impartial justice; (6) right to reputation and freedom from arbitrary interference with privacy, family, home or correspondence; (7) freedom of movement, and right to leave any country and to return to one's country; (8) right of asylum from political persecution; (9) freedom from arbitrary deprivation of one's nationality and right to change one's nationality; (10) right to marry, without any limitation of race, nationality, or religion; (11) right of property, and freedom from arbitrary deprivation of one's property; (12) freedom of thought, conscience, and religion; (13) right of peaceful assembly and association, and freedom from compulsion to belong to any association; (14) right to take part in the government of one's country, and equal access to public service in one's country; (15) right to social security; (16) right to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, and to just and favourable remuneration insuring one's self and one's family an existence worthy of human dignity; (17) right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay; (18) right to education; (19) right to freely participate in the cultural life of the community, and (20) right to 'a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized'.

**§6. Fundamental rights guaranteed by written constitution.** Adoption of this Declaration of Universal Human Rights by the General Assembly of the United Nations Organization does not make the rights effective, as the United Nations Organization cannot compel their observance in the



different states. It is otherwise when Fundamental Rights are embodied in the Constitution of a country (as in the U.S.A. and India), and the courts are invested with the power of declaring a law invalid if it violates any of the rights. This places the rights on a firmer footing, but on the other hand makes the validity of any law doubtful until the Supreme Court has pronounced upon it.

(a) In the U.S.A. The constitution of the U.S.A. guarantees freedom of religion, of speech, of the press, and of assembly; it guarantees the right of the people to keep and bear arms, to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, and to trial by jury; no person is to be deprived of life, liberty or property, without due process of laws; nor private property to be taken for public use, without just compensation; the right to a *habeas corpus* is not to be suspended, unless when in cases of rebellion or invasion the public safety requires it; excessive bail is not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

(b) In India. The constitution of India guarantees to all citizens (1) protection of life and liberty (except according to procedure established by law), (2) protection against arrest and detention (unless the person is arrested or detained under a law providing for preventive detention), (3) equality before the law, including equal access to all public places and equal opportunity to employment under the State, (4) freedom of speech, of assembly, of association, of movement and settlement, and of profession (except under reasonable restrictions made in the interest of the public), (5) freedom of religion, (6) right of property (including the right to compensation in case property is acquired for a public purpose), and (7) the right of minorities to conserve their own language and culture.

Besides these rights, the constitution of India enunciates certain 'Directive Principles of State Policy', which are not enforceable by any court, but which are declared to be

nevertheless fundamental in the governance of the country, and 'it shall be the duty of the State to apply these principles in making laws'. The underlying idea of these 'directive principles' is 'to promote the welfare of the people' through 'a social order in which justice, social, economic and political, shall inform all the institutions of the national life'. Securing to the citizens an adequate means of livelihood; distribution of wealth in such a way as best to subserve the common good; equal pay for equal work for both men and women; protection of the health and strength of workers, especially children, from abuse and exploitation; provision, 'within the limits of the State's economic capacity', of the right to work, to education, and to public assistance in cases of unemployment, old age, sickness, etc.; a living wage and decent conditions of work for all workers; special care for the weaker sections of the community; improvement of the level of nutrition and general standard of living; provision of free and compulsory education for all children under fourteen—these are some of the most important of these 'directive principles'.

§7. **Is there any advantage in laying down fundamental rights in a written constitution?** Some people doubt the wisdom of including a list of Fundamental Rights in the constitution. Such inclusion proceeds from distrust of the ordinary legislature. But the framers of a constitution can provide only for the foreseeable future; they 'cannot know what problems will arise in ten, twenty, fifty or a hundred years. Any restriction on legislative power may do harm, because the effect of that restriction in new conditions cannot be foreseen. It is a useful principle that one should never trust politicians; but . . . on the whole the politician of tomorrow is more likely to be right than the constitutional lawyer of today'.<sup>1</sup> Again, there are few rights which can be stated in simple, categorical terms. The exact scope of a right has to be defined by careful balancing of various interests against

<sup>1</sup> Sir Ivor Jennings, *Some Characteristics of the Indian Constitution*, pp. 53-4.

one another, and this is, in fact, what the legislature of a country is constantly engaged in doing in its legislation. Framers of a constitution show their awareness of this when after enunciating a certain fundamental right, say, the right of free speech, they go on to add that nothing in that clause shall affect any law 'in so far as such law imposes reasonable restrictions on the exercise of the right . . . in the interests of the security of the State, friendly relations with foreign States, public order',<sup>1</sup> etc., etc. Does not this, it may be said, amount to taking away with the left hand what has been given with the right? If a fundamental right is to be subject to restrictions made by the Legislature, why enunciate the right at all? The effective enjoyment of rights depends on the total social situation. There are no fundamental laws enunciated in any constitution in England, and yet the liberties of Englishmen are as safe as—indeed safer than—anywhere else in the world, because of the force of public opinion.

We may say in reply to the above that here again conditions differ in different countries. Where there is an instructed and ever-watchful public opinion, as in England, the provision of fundamental rights in a written constitution can be dispensed with. It is otherwise in countries in which public opinion is not similarly active. Here the inclusion of a list of fundamental rights in the constitution provides a guarantee that certain rights will be maintained. Nor need such inclusion bar all progress: if any item in the list of guaranteed rights is found to render some desired progressive legislation impossible, the situation can be met by an amendment of the constitution. This means a more than usually deliberate procedure, which will arouse and educate public opinion—a gain in itself.

**§8. Some particular rights.** How all rights—even the most fundamental of them—are relative to circumstances, and hedged about with restrictions, can be seen by a discussion of some of them.

<sup>1</sup> The Constitution of India, Section 19(2).

## (1) RIGHT TO LIFE

Primitive society was powerless to protect the individual's life and allowed private war—the blood-feud—which sometimes went on from generation to generation. Gradually, the wastefulness of the procedure, and the weakness of those societies which permitted such discord in comparison with those which did not, were seen, and the blood-feud habit was given up, and the individual came to possess the right to life. But the right was, and continues to be, subject to limitations. The reasons for its limitation have been, in the main, economic. 'Where the struggle to maintain the society has been severe, the weak have had to be eliminated; men have both practised infanticide and killed the old; they have abandoned the sick.'<sup>1</sup> Infanticide was practised even among the highly civilized ancient Greeks; and it was practised among certain Indian communities even up to the middle of the last century. Birth-control, which is current among highly civilized societies of today, is only a degree or two removed from infanticide: the one extinguishes a life which has already come into existence, the other prevents potential life from coming into existence.<sup>2</sup> Lastly, the everpresent contingency of war is a perpetual reminder that the right to life rests on no very secure foundations.

## (2) PERSONAL FREEDOM AND FREEDOM OF MOVEMENT AND SETTLEMENT

Modern civilized societies recognize these rights in their law. But slavery, which is a denial of these rights, subsisted in most societies down to very recent times. It was abolished

<sup>1</sup> Sumner & Keller, *The Science of Society*, vol. I, p. 611.

<sup>2</sup> Speaking of the Athenian citizen who exposed his child, Zimmern observes: 'If he consented to exercise his immemorial right over his own off-spring, he did so with regret, for the sake of his city and his other children, because it was more merciful in the long run. We have no right to cast stones either at him or his fellows. They were the victims of social forces, like the thousands of civilized working mothers who are forced to neglect their babies today, and the thousands of Western parents who, rightly or wrongly, prefer a small family to a large one.'—Zimmern, *The Greek Commonwealth*, p. 329.

in England only in 1834. In India slavery came down from the most ancient times, but Indian slavery, which was domestic, was mild in comparison with the plantation slavery in America or the colonies. It was abolished in 1843. The only restrictions on personal freedom and freedom of movement in India at present are those allowed by the law of preventive detention.

In Russia serfdom—under which a cultivator was bound to the soil, and could not leave it—was abolished only in 1862.

But while slavery may be abolished by law, something like it may be reintroduced by economic necessity. 'The free man has a tyrant whom the slave never knew, namely, Care; and every step that is made in industrial progress adds new weight to the tyranny of Care.'<sup>1</sup> Thus we have the institutions of 'debt-slavery', by which men contract to repay a debt by means of labour; or of 'indentured labour', by which they contract to labour for a certain number of years at a time. It was economic reasons, too, which prevented labourers in England from moving freely from one part of the country to another during the 18th and the first half of the 19th centuries. These hindrances had not been intentionally imposed; they had grown up out of the administration of the Poor Law. As the burden of supporting paupers fell on the parish, the administrators of the Poor Law funds in each parish would not allow any outsider to come and settle in their parish for fear that he might 'come on the rates' (i.e. have to supported out of their funds).<sup>2</sup>

In brief, the rights of personal freedom and freedom of movement, etc. cannot be effectively enjoyed without economic security.

### (3) RIGHT TO FREEDOM OF SPEECH (INCLUDING FREEDOM OF THE PRESS)

This again is an important right. Freedom to give expression to one's thoughts and opinions is a necessary element in

<sup>1</sup> Sumner & Keller, *The Science of Society*, vol. I, p. 627.

<sup>2</sup> Cunningham, *Growth of English Industry and Commerce*, p. 754.



the well-being of an individual. It is equally beneficial to society, because unless everyone is free to express his opinion, error will not be corrected, and progress will not be possible. 'Where the right [of freedom of expression] is generally exercised, the public benefits from the selective process of winnowing truth from falsehood, desirable ideas from evil ones.'<sup>1</sup> 'It is through repeated discussion that truth comes to be ascertained,' says a Sanskrit proverb; and that is also the burden of the poet Milton's pamphlet *Areopagitica*, written in 1644 in defence of the freedom of the Press, and to advocate abolition of the system of licensing which was then current in England:

'So truth be in the field,' he wrote, 'we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and falsehood grapple; who ever knew truth put to the worse, in a free and open encounter?'<sup>2</sup>

John Stuart Mill also puts in a passionate plea for 'liberty of thought and discussion' in his famous essay on *Liberty*, written in 1858:

If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind. . . . The peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; and those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.<sup>3</sup>

Like all rights, however, the right of free speech can only be exercised with due regard to the interests of others. One

<sup>1</sup> Quoted in Report of the Press Commission, Part I, p. 359.

<sup>2</sup> Milton, *Selected Prose* (World's Classics), p. 318.

<sup>3</sup> Mill, *Utilitarianism, Liberty, Representative Government* (Everyman's Library), p. 79.

must not, in giving free vent to one's opinions, injure someone else's reputation, or wound his religious susceptibilities, or lead him into ways of violence or immorality. The laws of all civilized countries restrict such misuse of the right of freedom of speech. And as the printed word is more potent than the spoken one,<sup>1</sup> a special responsibility attaches to the Press, and it is at times placed under special restrictions. The constitution of India guarantees freedom of speech and expression, but at the same time allows legislation imposing 'reasonable restrictions' on it 'in the interests of the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation, or incitement to an offence.'<sup>2</sup> This section has validated legislation under which the Government can, after a warning, demand a security from a press which has published objectionable matter.

#### (4) RIGHTS OF ASSEMBLY AND OF ASSOCIATION

These are corollaries of the right of free speech, because if truth is to be attained through the 'cut and thrust of discussion', men must be free to meet together, and if men of like mind are to achieve any practical results, they must be free to combine, and to form associations. Yet freedom of association has not been too easily won. Associations have been suspect because, in the first place, they stand between the individual and the state, and may draw off the citizens' loyalty from the state; and, secondly, because through the weight of their numbers, they are apt to exert an undue pressure on the individual.<sup>3</sup> It was for this latter reason that trade unions had

<sup>1</sup> 'Oral utterances are heard only by those who happened to be present, while a newspaper carries its message all over the world; the spoken word is ephemeral while printed matter is more permanent.'—Report of the Press Commission, Part I, p. 382.

<sup>2</sup> Constitution (First Amendment) Act of 1951.

<sup>3</sup> 'It is impossible altogether to prevent an association which exists to secure a particular object from coercing to a certain extent persons not its members who refuse to join it and pursue a contrary object, or the same object in a different way.'—G. D. H. Cole, *Social Theory*, pp. 130-31.

to wait for legalization in England till the last quarter of the 19th century.

The Constitution of India guarantees the rights of assembly and of association, except for 'reasonable restrictions' in the interest of public order or morality.

Interesting questions sometimes arise with regard to the right of assembly. That there is no right of assembly for some unlawful object, and that the Government should have the right to disperse an unlawful assembly, is only common sense, and it is also the law. A question arises whether the same applies to an assembly which is 'likely to cause a disturbance of the public peace'. A disturbance of the public peace may result from an assembly, even though the assembly itself is perfectly legal and peaceful, because some *other* persons do not like the assembly to be held. In India it seems that a magistrate is empowered by law to disperse such an assembly, equally with an unlawful assembly.<sup>1</sup> In England, the law appears to hold that a meeting which is lawful cannot be broken up by the magistrates simply because it may lead to a breach of the peace on the part of wrong-doers.<sup>2</sup>

### (5) RIGHT OF PROPERTY

There is no right which illustrates the relativeness of rights to circumstances, and their dependence on general social welfare, so well as the right of property. That a certain control over material goods is necessary for an individual, if he is to develop his best capacities, is universally admitted; but the kind of objects over which such control should be allowed, the nature of the control, its limits—all these are variable, to be determined, as occasion may demand, by considerations of the common good.

The Constitution of India guarantees the right 'to acquire, hold, and dispose of property', and also to compensation—though not to full compensation at market value—in

<sup>1</sup> The Criminal Procedure Code, section 127.

<sup>2</sup> Dicey, *Law of the Constitution* (8th edition), pp. 272-3, 503.

case of compulsory acquisition of property for public purposes.

(6) RIGHT TO WORK, TO ADEQUATE WAGES, AND TO SOCIAL SECURITY

It is in vain for a state to guarantee men's right to 'acquire, hold and dispose of property' if they cannot obtain work, even though willing to work; or if, even when they obtain work, their wages are just sufficient to keep body and soul together. In the modern world, large numbers of men, for no fault of their own, cannot obtain employment. It is natural to think that society, which is at least partly responsible for this state of things, must find work for the unemployed, or maintain them during the period of unemployment. Yet most states have so far found it beyond their capacity to give effect to these rights. The first attempt to do so was made in France, in 1848, and it proved a dismal failure. In that year there occurred a revolution, the Orleanist monarchy was overthrown, a Republic (known as the Second French Republic) was proclaimed, and a provisional government was set up. Louis Blanc (1811-82), who had passionately advocated the labourers' 'right to work' in his book *Organization of Labour* (1839), found himself a member of the provisional government. On his motion, the Government undertook 'to guarantee the livelihood of the workers by work'. Works were opened in Paris, and soon some 100,000 men joined them. But the works were unproductive; in three months' time the Government found that it could not continue them, and the men were asked to disperse. They refused, and ultimately force had to be used. There was fighting for four days in the streets of Paris, and the casualties numbered ten thousand.<sup>1</sup>

Since 1848 the only country, perhaps, to give effect to the 'right to work' has been Russia, where, however, a price has had to be paid for it—in the shape of loss of political liberty. Other countries, e.g. England, have followed a more cautious

<sup>1</sup> H. A. L. Fisher, *The Republican Tradition in Europe*, p. 188.

policy, by way of insurance of the worker against unemployment, sickness, old age, etc. In India, the constitution-makers have wisely included these rights among the 'Directive Principles of State Policy', and not among the Fundamental Rights. Through the Minimum Wages Act (1948), the Employees State Insurance Act (1948) and the Employees Provident Fund Act (1952) the State is gradually feeling its way towards the recognition of these rights.

**§9. Rights in time of war.** The discussion so far has shown how rights are at all times relative to circumstances and limited in various ways. But nothing shows this more vividly than their position during war-time. The state during war-time may be likened to an individual who has to act in self-defence. The ordinary law and rights are suspended during war-time by acts like the Defence of the Realm Acts. Under the Indian Constitution, too, if the President is satisfied that there is a grave emergency whereby the security of India or of any part of it is threatened, he may by proclamation make a declaration to that effect, and then the rights guaranteed by the constitution remain suspended.

**§10. How rights are maintained.** How is it, one may ask, that the rights recognized by a particular society are maintained? In the case of what we have called 'moral rights' enforcement is effected through social opinion. A person who commits a breach of any of them is looked down upon by society, and that is generally a sufficient punishment. In the case of *legal* rights, it seems at first sight that they depend for their maintenance on the Government: if someone violates some legal right of mine (e.g. if he assaults me, or commits a theft in my house) I can call in the machinery of Government for redress. Government uses the powers at its command to punish the culprit. In the last analysis, however, the force at the command of the Government is the force of society, and it is society, ultimately, which maintains the rights which it recognizes. This becomes clearer when we consider that rights have at times to be enforced against the Govern-



ment itself. The legislature may, in passing some legislation, encroach on some right guaranteed by the Constitution; or the executive government may overstep the limits set to it by the legislature. In either case the aggrieved person can appeal to the judiciary for redress, and if he is right, the court will set aside the offending piece of legislation as being beyond the powers of the legislature (*ultra vires*), or direct the executive to rescind the offending order. But would the executive obey the court's decision? What makes it do so? It obeys because if it does not, the conscience of the whole community would be shocked. An ex-President of the U.S.A. is reported to have said about a Chief Justice of the Supreme Court who had pronounced against him: 'John Marshall has pronounced his sentence; let him now carry it out.' If the sentence *was* carried out, it was because the public opinion of the U.S.A. was behind the Supreme Court and its Chief Justice. Ultimately, therefore, it is public opinion that maintains the system of rights in a society, and the public has to be watchful for its rights, or else they will not be safe: 'Eternal watchfulness is the price of liberty.'

§11. **The duty of public spirit.** It follows that there is incumbent on the citizen one general duty over and above the specific duties connected with the various rights recognized by the society. This is the duty of public spirit. Public spirit, however, cannot be forced; it is a *moral*, not a legal, duty. It arises from a lively consciousness of one's debt to society, and leads to a readiness to serve society, and to prefer the common good to one's own individual advantage. A good citizen, actuated by public spirit, will, in the first place, willingly obey the law, and perform all his legal duties; but further, realizing that government exists for the good of society, and that, by itself, it will not be able to accomplish much, he will actively co-operate with it. For example, if a crime has been committed in the neighbourhood, he will not sit quiet with the idea that it is the business of the police to find out the culprit, but will do all that may be in his power

to accomplish that object. (In India, under the Criminal Procedure Code, it is even the *legal* duty of every person, who is aware of the commission, or intended commission, of certain offences, to give information of it to the nearest Magistrate,<sup>1</sup> and to assist a Magistrate or police officer, reasonably demanding his aid, in making arrests, in preventing or suppressing a breach of the peace, or in preventing injury to any railway, telegraph or public property).<sup>2</sup> He will help the authorities in maintaining the health of the community and preventing the spread of disease: no amount of *laws* will be effective for this without the willing co-operation of the people. And if he is a voter, he will try to form a judgement of his own on the question of the day, and cast his vote, not for reasons of private or sectional advantage, but for those of the public good.

**§12. Resistance.** But public spirit may occasionally, though rarely, issue in conduct of very different character. It may lead a citizen to disobey or resist the state. The citizen may feel outraged in conscience by some law of the state or some institution of the society, and may feel it impossible to obey the one or to conform to the other. That the citizen has the right, even the duty, of resisting the state is undeniable. 'No moralist would deny that there are limits to the obedience which the state can require of its members. The notion that the state is sacrosanct, that it can do no wrong, that it must be supported and defended no matter what iniquities it may perpetrate, that the one and only law of citizenship is "My country right or wrong", is utterly contrary to the dictates of the individual conscience. . . . The citizen owes to the state the free and honest exercise of his moral faculties, and, if he believes a policy to be wicked or tyrannical, must not hesitate to declare his view.'<sup>3</sup> Some whom the voice of

<sup>1</sup> Criminal Procedure Code, section 44.

<sup>2</sup> *ibid.*, section 42. Under section 128 a Magistrate can also require the assistance of any male person among the civilian population to disperse an unlawful assembly.

<sup>3</sup> H. A. L. Fisher, *The Common Weal*, pp. 188-9.

humanity has acclaimed as among the noblest and most virtuous of men, have accordingly felt compelled to break the laws of their country. Socrates would not worship the gods recognized by his state; Hampden would not pay a tax imposed by his king; Mazzini spent a lifetime in plotting to overthrow the existing governments of Italy. Magna Carta, the Civil War, the Revolution of 1688 are not generally reckoned among the great crimes of English history.

When all this has been said, however, it remains true that disobedience or resistance to the state is so grave an act that the good citizen will not undertake it except as a last necessity, after every other resource has been exhausted. It is the 'extreme medicine' of the state, not its 'daily bread'. It is, in the first place, only in matters of the most vital importance that resistance is to be thought of. To every question there are two, and sometimes more than two, sides. If in every case when government has decided a question in one way, all those who think that it should have been decided in some other way were to disobey, there would be an end of all government and all society. 'Not every mistake in government is worth a revolution.' In the second place, even in matters of vital importance, the good citizen must consider whether the change he desires is not capable of being accomplished in other ways. He will not lightly disturb the habit of obedience on which social order so largely depends. He will go on obeying even a bad law, and try at the same time to procure its repeal. Thirdly, he will consider whether his object is likely to be achieved through resistance without producing other evil consequences. For the issue of extreme political courses is always uncertain, and when the resister has achieved the particular object of his effort, he may find that his action has had unforeseen results whose evil tendencies outweigh any good that the reform he has striven for is likely to bring about. In short, it is the *total* result of resistance that must decide the question. Good citizenship consists 'in making the best of existing institutions, in maintaining social order and the general fabric of

rights', and in making 'a bona fide estimate of the value of the existing government in its relation to public good'.<sup>1</sup>

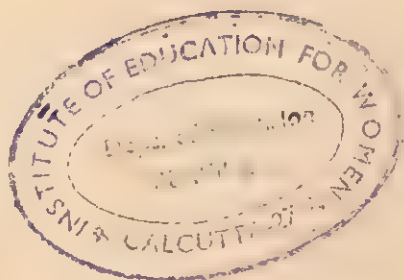
§13. **Passive resistance.** This caution is necessary whatever the form of resistance—whether it is *active* or *passive*. The passive resister breaks a law, but is prepared to suffer the punishment according to law. His prototype is Socrates. Socrates would not obey the laws of his state in so far as they came into conflict with his conscience; he would 'obey God rather than man'. On the other hand, when found guilty and condemned to die, he would not take the advice of his friends to flee from the law. He must be loyal, and suffer the penalty prescribed by law. The argument for loyalty, and for readiness to suffer the penalty of the law, was never more beautifully expressed than by Plato in the immortal dialogue *Crito*. 'Imagine', he makes Socrates say, 'that I am about to play truant, and the laws and the government come and interrogate me: "Tell us, Socrates," they say, "what are you about? Are you not going by an act of yours to overturn us—the laws, and the whole state, as far as in you lies? . . . Has a philosopher like you failed to discover that our country is more to be valued and higher and holier far than mother or father or any ancestor? . . . also to be soothed, and gently and reverently entreated when angry, even more than a father, and either to be persuaded, or if not persuaded, to be obeyed? And when we are punished by her, whether with imprisonment or stripes, the punishment is to be endured in silence; and if she leads us to wounds or death in battle, thither we follow as is right; neither may any one yield or retreat or leave his rank, but . . . he must do what his city and his country order him; or he must change their view of what is just; and if he may do no violence to his father or mother, much less may he do violence to his country."'<sup>2</sup>

Because the law is honoured by submitting to its punishment—so the passive resister argues—and because the resister

<sup>1</sup> T. H. Green, *Principles of Political Obligation*, p. 120.

<sup>2</sup> B. Jowett, *Dialogues of Plato*, vol. II, pp. 151-3.

alone is the sufferer, resistance of the passive kind is a safe and sovereign remedy for all social wrongs. This confidence seems, however, to be unjustified. If every law which someone does not approve of may be defied by him, even if passively, society would be perpetually in agitation, a large part of the community (which may be anything less than a half) would be in revolt (though passive revolt) against the rest, and law and government would be brought into contempt. Nor is it true to say that in passive resistance the resister alone is the sufferer. This assumption rests on a false separation between the individual and society. If an individual suffers, others suffer, too, in different ways and different degrees. Passive resistance is safer than active resistance, but all resistance to the state is a matter of extreme gravity, which the good citizen will not undertake without the most anxious deliberation and searching of his soul.





## CHAPTER IV

### THE STATE AND ITS MACHINERY

§1. **Types of the state.** The structure of the state has assumed many forms: its broad types may be thus distinguished. (i) There is first a distinction between despotic and democratic states. In democratic states large numbers of ordinary men have an opportunity, regularly and constitutionally, of expressing their opinion about their government, and, if the existing government has been unsatisfactory, of changing it; in despotisms there is no such opportunity, 'the community is controlled by a few uncriticized and absolute rulers', and when public opinion gets out of tune with the government, it has to break out in violent form—in revolution or assassination.

(ii) The method provided for the regular expression of public opinion may be that of meeting personally in assembly. This was the method in use in the ancient city-state. In the modern territorial state, a mass meeting of all citizens is impossible. Hence the device of *representation*. Modern democracy is thus *representative*, as distinguished from the *primary* democracy of the city-state.

Representative institutions arose in the Middle Ages, when communication between different parts of the country was difficult. In those circumstances the only way in which people could exchange views and come to a decision was by means of a meeting, not of all the people—for this was impossible—but of their representatives. In modern times science has altered the conditions of the formation of public opinion. The printing-press, the telegraph, the wireless, have brought it about that people in different parts, not only of the same country but of the world, can read the same item of news in their morning paper, or listen, in their own homes, to the words of the same speaker. For this reason it has been argued that the modern state may now return to primary democracy.

Such institutions as the Referendum and the Initiative are, in fact, a partial return to primary democracy. Whether the agency of representatives can be altogether eliminated is, however, a question for further consideration.

(iii) In every state new laws have, from time to time, to be made; whether there has been a breach of any law has to be decided; and the laws have to be enforced, and the state defended from external enemies. It is usual to separate these three functions—legislative, judicial and executive—to some extent, and place them in different hands. This principle—that of ‘separation of powers’—was at first advocated as a guarantee of *liberty*. That claim is, to some extent, justified; but some separation is also dictated by the consideration of *efficiency*, because the qualities required for the efficient discharge of the different functions are different. Now, in a democracy, the legislature and the executive (and perhaps also the judiciary) may each be separately elected by the people; or, as is more usual, the people may only elect one body—the legislature—and this body may then appoint the executive. The former method obtains in the United States of America; the latter in England and France. The former is called the Presidential system (from ‘President’ being the name of the head of the executive in the U.S.A.); the latter is called the ‘Cabinet System’ or the ‘Responsible System’.

(iv) Lastly, the greater size of the modern state necessitates a distinction between *central* and *local* government, and this leads to differences in structure, in accordance with differences in the relation of central to local government. For the local government may either be subordinate to the central government, or co-ordinate with it. In the first case we have *unitary* government, in the second, a *federation*. Unitary governments, in their turn, may be further subdivided, according to the degree of the local government’s subordination. If the local government is nominated by the central government, and simply carries out the orders of the latter, we have ‘Centralized Unitary Government’; if the local government is elected by

the people of the locality, and can act as it likes within certain limits—if, in other words, there is a measure of local *self-government*—we have ‘Decentralized Unitary Government’.

It may be pointed out that the terms ‘central’ and ‘local’ government are relative; e.g. the Government of Bombay is ‘local’ in relation to the Government of India, but is ‘central’ in relation to the municipalities and local boards within the state.

§2. **Constitutions.** The rules which determine the structure and powers of the government of a state make the ‘constitution’ of that state. These are matters of vital importance to everyone; and so rules about them are generally deliberately made and written down in a document or series of documents. For the same reason, too, they are provided with special safeguards: they are not to be changed like ordinary laws, but only by a special, somewhat difficult, procedure. In other words, constitutions are generally ‘written’, and are generally more or less ‘rigid’. There is a feeling that ‘writing’ and ‘rigidity’ are necessary for clarity and security; that the fundamental governmental institutions of a country ought not to be left in doubt and uncertainty, and must therefore be put into black and white; also that they ought not to be liable to be lightly set aside, and that there should therefore be a somewhat difficult procedure for changing them. The feeling is to a great extent sound. A written constitution may not possess absolute clarity; still there is no doubt that writing makes for clarity and definiteness. A certain amount of rigidity, too, is desirable, because it is a guarantee that fundamental institutions of the country will not be changed without due consideration. But rigidity must be moderate in order to be good; and it can be dispensed with if the people are by nature cautious and conservative. In England, for example, although the constitution is ‘flexible’, not ‘rigid’; although, in other words, constitutional changes can be made in the same way as ordinary laws, still on account of the temper of the people, revolutionary changes in the constitution of the country are

impossible. Nevertheless, as said above, a certain measure of rigidity in the constitution is reassuring and therefore desirable.

§3. **Democracy: its merits.** Democracy is an index to the political maturity of a people: it means that a people 'have come of age'. Despotism is appropriate to times when a people are politically unconscious; other matters, e.g. religion, absorb attention, and government is a matter of indifference. The functions of government under such a system are few, being limited, perhaps, to defence from external aggression, and the government is apt to present itself to people principally in the role of a tax-collector. So long as things are tolerable, people acquiesce passively; but a time may come when relief from oppression is sought in rebellion or assassination.

It is an advance on this state of things when ordinary people develop political consciousness, and begin to interest themselves in their government. The whole character of government then undergoes a change. Sooner or later those who have developed political consciousness come to establish effective control over government. They begin, perhaps, by demanding to be consulted, through their representatives, in certain matters to which they attach importance (chiefly the raising of money); it may even be that the first step in the process is taken by the government, not by the people—that it is not the people who *demand* to be consulted, but the king who *requires* them to give him their advice. The ultimate result, however, is the same; the people who have become 'politically conscious', who have ceased to be merely passive, and have developed an active interest in governmental matters, get control over the government, through some assembly which represents their opinion. This is democracy, and it is an advance for more than one reason:

(i) Government becomes stronger, and can be put to many more uses than before. A despotic government is nervous, as Tocqueville<sup>1</sup> remarks about the government of

<sup>1</sup> Alexis de Tocqueville (1805-59), French publicist, wrote books on 'Democracy in America' (1835) and 'The Old Regime' (1855).

the *ancien régime* in France. A democratic government is itself more confident, and commands more confidence from the people. What would have been resented as 'interference' from an autocratic government is accepted without demur if it comes from a democratic government. The result is a vast extension in the sphere of government, to the immense benefit of the great majority of people. In fact the whole attitude towards 'government' has changed under democracy. Government is not looked upon as something external, to be avoided as far as possible, but as an instrument for the good of the community, to be utilized to the fullest extent.

(ii) Democracy provides an easy method of effecting a change in government when the existing government has ceased to be satisfactory. 'The process of changing ministers and majorities in the elected Assembly provides an alternative method to revolution, for meeting social changes.'<sup>1</sup>

(iii) Democracy has a healthy effect on the intelligence and character of the people. 'Every authoritarian system diminishes the vitality and intelligence of those under authority.'<sup>2</sup> Where thinking is futile, it is not likely to be done. Mill was particularly insistent on this *educative* effect of democracy. A government, he said, must be judged, not merely by its efficiency, not only by 'what it does *with* men, but by what it makes *of* them'.<sup>3</sup>

**§4. Dictatorship.** It may perhaps be thought that even a politically conscious people would find it an advantage to put themselves under one man, and make him dictator. There would be a gain in efficiency. Such is the regime which obtains at present in Spain, and which obtained, in the years before the Second World War, in several other countries (e.g. Germany and Italy) whose people cannot be said to be lacking in political consciousness. But, apart from the question as to the method of appointing the dictator—(Hitler, Franco

<sup>1</sup> C. Delisle Burns, *Democracy*, p. 135.

<sup>2</sup> *ibid.*, p. 66.

<sup>3</sup> *Representative Government* (Everyman's Library), p. 195.



and Mussolini made their way to power through revolution, and no one can seriously propose this as the normal method for appointing dictators)—there is the further difficulty that a dictator can hardly be expected to be alive to *all* the needs of *all* sections of the people over a long period. 'If a man is dictator because he is honest, intelligent and competent, to make him dictator is the surest way of destroying all three of those virtues. No dictator can escape the inevitable consequences of a lack of public discussion and free criticism.'<sup>1</sup> Hence dictatorship can only be temporary, and minister to some paramount need of the hour (such as preparation for or conduct of a war). It cannot give effect to the varied purposes and aspirations of a community over a long period. A politically conscious people will, therefore, sooner or later, naturally express itself through an Assembly.

**§5. Requisites of democracy.** Though democracy is evidence of political maturity, it is at the same time a difficult form of government, and makes large demands on the people. It 'expects every man to do his duty'.

(i) In the first place, as decisions in a democracy are made as a result of discussion, it requires a temper of 'sweet reasonableness', a willingness to understand a point of view different from one's own and a readiness to compromise. These requirements cannot be fulfilled where people are divided by sharp differences on fundamental issues, and where they are prepared to break heads rather than count them.

(ii) Secondly, democracy demands of citizens continuous *interest* in public affairs. The average citizen is likely to be so immersed in the daily routine of earning his livelihood that he has little time or energy left for public affairs. Or again the citizen may feel that he is but one among a great multitude, and thus fall into indifference. 'What matter how I vote? What matter if I vote at all?'—such is apt to be the fatal paralysing thought.<sup>2</sup> Yet unless there is interest in public

<sup>1</sup> Burns, *Democracy*, p. 69.

<sup>2</sup> J. MacCunn, *Ethics of Citizenship*, p. 74.

affairs among large numbers of people, democracy is a sham.

(iii) Over and above interest in public affairs, there must be judgement. In order to be able to pronounce upon the work of a government, the citizen must have some sense of what is desirable and practicable in public affairs. This would seem to require some knowledge and some concern for the good of others. Ignorance and corruption have been the two grounds on which democracy has been denounced by many thinkers. 'Inexpressibly delirious seems to me', wrote Carlyle in 1867, immediately after the passage of the Reform Act of that year, 'the puddle of Parliament and Public upon what it calls the Reform measure; that is to say, the calling in of new supplies of blockheadism, gullibility, bribability, amenability to beer and balderdash, by way of amending the woes we have had from our previous supplies of that bad article.'<sup>1</sup>

Sir Henry Maine, too, was similarly sceptical about democracy. And it must be admitted that ignorance and corruption are real pitfalls in the way of democracy. On the other hand, apart from the retort of *tu quoque*, there are reassuring features. Some concern for the good of others exists in all men; what is needed is to increase its volume and range. Ignorance too, may be progressively overcome; *interest* itself will do much; literacy will add its help, by freeing men from the influence of rumour; and the press and political parties are further instruments for the education of the electorate.

**§6. Political parties.** A political party is an 'association organized in support of some principle or policy which by constitutional means it endeavours to make the determinant of government'.<sup>2</sup> This implies agreement regarding fundamentals of government, but difference as to what government should do. If there is no agreement on fundamentals, men will be prepared to act unconstitutionally. But even those who agree on fundamentals will differ on details, and form different

<sup>1</sup> *Scottish and other Miscellanies* (Everyman's Library), p. 306.

<sup>2</sup> R. M. MacIver, *The Modern State*, p. 396.

parties to realize their respective views. The differences may be connected with the personal magnetism of great leaders—(men will be drawn into different camps by enthusiasm for rival statesmen, such as, for example, Gladstone and Disraeli); or with differences of temperament—('one man stays at home and another prefers to explore; one seeks safety and another adventure');<sup>1</sup> or with different stations in life—('wealth and birth and privilege make for conservatism; poverty and lack of opportunity urge in the opposite direction');<sup>2</sup> or a thousand other circumstances. But whatever the explanation, each party stands for a distinct principle on which it believes the government should be conducted. 'Party', says Burke, 'is a body of men united for promoting by their joint endeavours the national interest upon some particular principle on which they are all agreed.' This principle is embodied in the party programme, and the party seeks to obtain as large a support for this programme as possible, and carries on propaganda for it. That is how Party serves as an educative agency. The citizen finds himself appealed to by different parties, and has to compare and choose between the different programmes. Often enough, it is true, the appeal may be of a different and lower kind. It may be to the voter's individual interest. But this should not be so. If it is, it is a sign that public spirit is not what it should be. The same thing must be said about parties which follow the lines of caste or creed or race. The existence of such parties indicates that the idea of the state is still imperfect, and that of caste or creed or race still too strong. When parties follow such lines, their membership is necessarily static, because men cannot shift from one party to another. There can then be no question of any appeal to the citizen. For no amount of appeal will turn a German into a Pole, or a Brahmin into a non-Brahmin, and vice versa. When parties are what they should be, however, each party makes a *national* appeal, on behalf of principles which it advocates

<sup>1</sup> *ibid.*, p. 406.

<sup>2</sup> *ibid.*

for the welfare of the whole. Each party would then represent a different conception of the common good, for there are many possible views of the common good, and of the means of realizing it. The educative function of Party is then realized to the fullest extent.

But Party which, when properly used, should be an instrument of political education, and of democracy, can be perverted to kill all discussion and turned into an instrument of Dictatorship. A single party, like the Fascists in Italy, the Nazis in Germany, or the Communists in Russia, has used political power to suppress all other parties, and to set itself up as the sole representative of the people. Such a development, when carried to its logical conclusion, constitutes a negation of democracy. By controlling all means of organized thought and opinion, the dominant party makes the formation of free and honest opinion virtually impossible; by using its control of government machinery to suppress other parties, refusing to allow any other party to be formed, and thus restricting the choice of the electorate to its own members, it deprives the voter of his political freedom; and finally, by transferring all vital decisions to itself, it deprives the formal political institutions of all significance. In its own organization the party may *claim* to be democratic, but it usually has a 'leader' as the 'true and authentic voice of the whole community'; in any case, its role is incompatible with truly democratic ideas and institutions. Thus 'party, formed for discussion, has killed the discussion for which it was formed. One of the means has destroyed the end. Democracy has perished at the hands of one of its children'.<sup>1</sup>

**§7. The Press.** The two chief instruments for propaganda available in modern times are the Press and the platform. Of these the Press is by far the more important. It has been called 'The Fourth Estate'. It is believed that it can make and unmake governments, or set two governments quarrelling. The exact influence of the Press, however, is at any time difficult

<sup>1</sup> Barker, *The Citizen's Choice*, p. 33.

to determine. The Press is apt to fall into the hands of moneyed men, and its policy is apt to be dictated by them. Editorial comments will then be made, not in a spirit of fairness, but so as to support the proprietors' views, and even the news will be 'edited' for the same purpose. This has, of course, its limits, because if a newspaper advocates an unpopular policy, it is liable to lose in circulation, and the loss in circulation is in turn likely to involve loss in the income from advertisements, which, it has been calculated, provide not less than half of the total revenue of a paper.<sup>1</sup> The management, therefore, have to keep an eye on their clientele. Besides, when a paper is known to be dominated by certain men or by a certain class, its views come to be discounted. It may continue to be read for other reasons, but it will not influence opinion. People will continue to buy and read it, but will not vote as it bids them. For these reasons, it is sometimes said that the Press cannot *create* opinion; it is not the newspaper, it is said, that makes opinion, but the opinion that makes the newspaper. This, however, seems a hard saying. A newspaper, we may believe, creates opinion, no less than it is created by the latter. It will at least confirm and strengthen the waverers, and may even make converts. Else why should each opinion and each party struggle to have its own paper?

From the point of view of the citizen, it must be confessed, the position appears to be full of difficulty. He is liable to be confounded by the hubbub of parties and the Press and the platform. Each party wants his vote—for whatever reason; the Press may be interested. One can only hope that the citizen listens to all, and then forms the best judgement he can, and votes according to it.

**§8. Direct popular government: the Referendum and the Initiative.** Normally, the citizen in the modern state

<sup>1</sup> In fact advertisers may influence the policy of a paper. 'The Press in India, as elsewhere,' say the Press Commission, 'depends to the extent of half its revenue on the advertisers, and the contents of a newspaper would, in the normal course of circumstances, be most susceptible to the influence of advertisers' (Report, p. 313).



expresses himself on matters of government by voting for a representative: a general election is the citizens' verdict on representatives and parties. But at an election the work of the representative or the party can only be judged as a whole. Thus the body of citizens exercises only a *general* control over government at certain intervals, leaving the actual work of legislation and executive action to the capable few. But in some countries (e.g. in Switzerland) the citizen is called upon to take part in the actual work of legislation, by means of the Referendum and the Initiative. The former means that a measure passed by the representatives is submitted to the electorate, and does not become law unless it is confirmed by a vote of the electorate; the latter, that a certain prescribed number of citizens have the right of proposing a measure so that a vote may be taken on it and it may become law. The Referendum is negative, and seeks to repair the representatives' sins of *commission*; the Initiative is positive, and seeks to repair their mistakes of *omission*. Both amount to the introduction of some measure of *direct* democracy.

These devices, however, are of doubtful utility. The Referendum is, indeed, useful in the decision of large constitutional questions; these the citizen can understand, and it is perhaps proper that a big change in the fundamental law should be made only when the electorate has definitely pronounced for it. In England, for example, the convention is growing that a measure of first-rate importance should not be passed by Parliament unless the electorate has pronounced its opinion upon it at a General Election. The Referendum may also be used with advantage to solve conflicts between different branches of the legislature. On the other hand, the ordinary citizen cannot have an opinion on the details of the numerous laws that are passed by the legislature, and will only be worried by the submission of these laws to him. Besides, the legislature's sense of responsibility is bound to be lessened by the consciousness that the final verdict does not lie with itself, but with the electorate. So far for the Referendum. The Initiative has still

lest use than the Referendum; for if some reform is keenly desired by a considerable part of the electorate, it can rarely happen that it is not taken up by some party and voiced in the legislature.

§9. **Work of the representative body.** The work of the representative body consists of considering and sanctioning new projects of laws, including measures for raising the revenue necessary to carry on the government, and that of exercising a general control and supervision on the conduct of government. In other words, it consists of legislation, taxation, and supervision of the executive.

§10. **Legislation.** The process of legislation has in most parliamentary countries been copied from England, where representative democracy has had the longest run. That process is designed to secure adequate consideration of a measure before it becomes law, and at the same time to prevent obstruction and delay. A new project or Bill passes through three 'readings'. At the first reading only the general principle of the Bill is in question. The second reading is the critical stage: in the course of this, or in the interval between the first and the second reading, the Bill is generally referred to a select committee for detailed consideration. After the committee's report, the Bill is submitted to the detailed consideration of the assembly clause by clause. The third reading is rather formal; only verbal amendments may be moved at it. The whole process may seem unnecessarily elaborate, but we realize its value when we see that it gives time, not only for members of the assembly, but for the Press and the public, to discuss the provisions of the Bill and to express their respective points of view. And discussion is the very breath of the democratic system.

But though discussion is necessary, it is equally necessary to limit it; 'assemblies are convoked to examine and discuss, but also to settle matters; a question cannot remain pending eternally; and the simple fact that it is not resolved often creates a cause of agitation without profit to

anybody'.<sup>1</sup> Hence rules about *closure*, by which an end can be put to debate and the matter under discussion put to the vote immediately; or about the *guillotine*, by which a certain number of days are assigned to a particular subject, and then, whatever the state of the discussion, the matter is put to the vote.

**§11. Taxation.** As regards taxation, early each year the government submits to the assembly a statement showing in great detail the amount it expects to spend on different items of expenditure during the next year, and the manner in which it proposes to raise the required amount of money. This is known as the budget, and it has to be passed by the assembly. Then there is an officer—the Auditor-General—to see whether the Assembly's directions with regard to expenditure have been carried out. He examines the accounts at the end of the year and makes his report to the assembly. The report is considered by a committee of the assembly, called the 'Committee on Public Accounts'.

**§12. Supervision of the executive.** Through its control of the purse, the assembly can make its will felt in every branch of the administration. If it does not approve of a certain course of policy, it has only to refuse to sanction the expenditure involved in that policy to make its will effective. The control of the purse is thus the key position, and the measure of an assembly's power in this respect is the measure of its power on the whole. It was through the power of the purse that the English Parliament gradually established its control over legislation and administration.

The financial control of the assembly, however, is nowadays apt to become shadowy, because, in the first place, only a limited amount of time can be given to financial business, and because, in the second place, few members can grasp the complicated figures which are submitted to them in the budget. The guillotine is apt to fall when only a portion of the budget has been discussed, and members are apt to vote automatically at the bidding of the party whip. In another way, however, the

<sup>1</sup> H. Finer, *Theory and Practice of Modern Government*, p. 850.

executive is kept alive to its responsibilities in the day-to-day administration. That is by means of Questions. Any member may put questions to the government, and at each sitting of the assembly some time is devoted to the answering of such questions.<sup>1</sup> This means that if there has been an abuse, the light of publicity will be thrown upon it almost immediately, and the government will be discredited in the eyes of the public.

**§13. Summons, prorogation, dissolution.** The assembly is generally summoned, prorogued, and dissolved by the head of the state or someone acting as his representative. The period between the first meeting and the prorogation makes a 'session'; at the end of a day's work, there is an 'adjournment', which takes place at the discretion of the assembly itself; finally, the assembly is 'dissolved', when it is thought desirable to hold a new election. 'A dissolution brings a existence of Parliament to an end; a prorogation brings about session of Parliament to an end; an adjournment brings about a cessation of the business . . . for a period of hours, days, or weeks.'<sup>2</sup>

**§14. Second chambers.** So far we have been speaking of the legislature as consisting of only one assembly. In most countries, however, the legislature consists of two 'houses' or 'chambers'. This is a much-discussed question—whether the legislature should have two houses, or only one, whether it should be 'bicameral' or 'unicameral'. There seems to be a good case for a 'second' or 'upper' chamber which should have the power to interpose a *suspensive veto* on the work of the 'first' or 'lower' chamber—which should, that is to say, be empowered to delay a measure for a certain limited period. This is the function, at the present day, of the British House of Lords. In money matters the House of Lords has no power

<sup>1</sup> In Bombay, one hour is allowed for questions at every meeting, except during voting of demands of the annual budget, when only half an hour is allowed.

<sup>2</sup> W. R. Anson, *Law and Custom of the Constitution* (1911), vol. I, p. 70.

at all; in other cases it can delay a measure passed by the House of Commons for a period of one year. But the British House of Lords is one of the weakest of second chambers. In most other countries the powers assigned to the second chamber are greater, and in all matters (except, perhaps, money bills) equal competence is assigned to the two houses. When this is so, some provision has to be made for resolving conflicts between the two houses. The device that is generally adopted for this purpose is that of a joint sitting (as in India or Australia).

**§15. The executive.** The branch of government which is most important, perhaps, from the ordinary citizen's point of view, being the one with which he comes most into contact, is the executive. It is also the most numerous. The legislative body in any state consists at the most of a few hundred persons; the executive (meaning by this all officials, high or low) consists, perhaps, of hundreds of thousands. The functions of the state have a tendency to grow, and with the functions the number of officials, who have to execute those functions, grows too.

**§16. Functions of the state.** About a hundred years ago the prevailing view about the functions of government was that it should confine itself to the minimum—the maintenance of order. Any extension of the sphere of government meant, it was thought, a corresponding contraction of individual liberty. Every person was the best judge of his own interest. No government could know it better than he, and it was a 'most unnecessary attention' on the part of government to direct him to it. *Laissez-faire* must, therefore, be the rule for government; each individual would then follow his own good, and the general good would be the result.

This, the 'individualistic' theory of state action, contains something that is valuable, and it did good work in its own time, but it is not wholly true. It arose in the eighteenth century in the economic field, as a protest against unwise government interference. For a long time governments had



been in the habit of regulating trade and industry. These regulations, however, became outworn and hampered progress. It was necessary to sweep them away. The so-called 'Physiocrats' in France, and Adam Smith in England, preached the doctrine of liberty, and partly as a result of their teaching the restrictions on trade and industry were gradually abolished. The policy seemed to find justification in the remarkable growth of wealth and prosperity in the first half of the nineteenth century; the doctrine spread from economic to other matters, and a contempt for all state action and belief in the superiority of individual action became accepted axioms.

Before long, however, the insufficiency of *laissez-faire* became manifest. 'For lack of regulation by law, work was carried on in factories and mines under the most appalling conditions, and often for a miserable wage; the industrial towns developed huge areas of slum dwellings, hideous, unhealthy, and demoralizing; nine-tenths of the population were allowed to grow up without education; in countless directions private greed successfully opposed the public good.'<sup>1</sup> It became clear that government must intervene to check these evils. Such intervention, it was realized, would not be a diminution of liberty; on the other hand, it would make liberty possible for those who had not possessed it before. For the 'liberty' which says 'either live in a hovel, work fourteen hours a day in a hot, moisture-laden atmosphere, always in danger of being caught up somewhere in the unfenced machinery, on a wage which will barely keep body and soul together; or else die'—such 'liberty' is hardly to be distinguished from slavery. It may be said: 'Are not men "free" to take up or not to take up work on such conditions, and do they not know their own interest?' But a man may *not* know his true interest, and even when he does know it, may not be in a position to follow it, being overborne by economic necessity. When the state steps in and regulates the conditions of work, therefore, it is promoting, not destroying, liberty; for it is freeing the

<sup>1</sup> Gill & Valentine, *Government and People*, pp. 248-9.

labourer from the tyranny of economic circumstance, and rendering it possible for him to make of his life something that is worthy.

Since the latter half of the nineteenth century, accordingly, the state has, in most countries, been extending its activities. It had never, indeed, confined itself to the bare 'individualistic minimum'; such matters as currency and communications, for example, had already been controlled by the state. But now it began to take more and more positive functions to itself. Modern states provide and regulate education; they concern themselves with public health; they regulate conditions of work by means of Factory Acts; they seek to protect the worker against the results of accidents, or sickness, or old age; they maintain museums, parks, and art galleries; they foster research and discovery, and promote schemes of development. It is generally believed nowadays that the state *should* do whatever it *can* do. 'The salient feature of modern government is its positive and wholesale activity.'<sup>1</sup>

**§17. The political executive.** A great army of officials is necessitated by this activity. The greater proportion of them hold their posts permanently, and form the Civil Service. But at the head of the various departments into which the whole work of government is divided are other men—the ministers—whose tenure of office is limited, being dependent on continued popular support. These, however, make policy; they may be called the 'political executive'. The business of the permanent Civil Service is to place its expert knowledge and experience at the disposal of the political executive, whatever it may be, and to carry out its policy. The political executive, as already explained, may be either co-ordinate with the legislature, or subordinate to it. The former system obtains in the U.S.A.; the latter, known as responsible government, obtains in England, France, India and other countries. The 'responsible' system arose first in England and is one of the great contributions which that country has made to the art of

<sup>1</sup> Finer, *op. cit.*, p. 1164.

government. The 'responsible' system makes a bridge, as it were, between the legislature and the executive, to the great advantage of both; it secures harmony between the two branches of government, and tends to stimulate public interest in their work. The system is open to one danger, instability of the government. But this depends on the state of parties in the legislature,<sup>1</sup> and can be minimized in certain ways.

There is a third type of executive in Switzerland which combines the merits of both the responsible and the non-responsible types. The members of the executive in Switzerland (called the Federal Council) are elected by the legislature. Thus there is in Switzerland that harmony between the legislature and the executive which is one of the admirable features of the responsible system. There is also stability, and that in a remarkable degree; for not only is the Federal Council elected for the term of the Assembly—three years—but the same members are frequently re-elected, if they are willing to serve. The political complexion of the Assembly may change; yet the ministers remain in office, and carry out the policy of the Assembly. In short, the ministers in Switzerland are like the permanent Under-Secretaries in England, or like the directors of a joint-stock company. This arrangement is possible in a small country like Switzerland, but would be impossible in bigger ones.

**§18. The civil service.** The policy determined on by the chief or 'political' executive is carried out in detail by the subordinate officials who form the civil service. These hold their offices continuously (until a certain age is reached), and do not change with changing ministries. On a first view one is inclined to think that if the ministry changes, the persons whose duty it must be to put into effect the new policy should also change. Experience has shown, however, that this does

<sup>1</sup> When the legislature is divided into two big parties, the executive, which must be drawn from the majority party, can rely on the steady support of that party; when, however, the legislature is not divided into two big parties, but into a number of small groups, the executive cannot rely on such steady support, and is liable to be unstable.

not conduce to the most efficient administration. The work of the various departments is specialized, and requires skill, and this skill is developed only through years spent at the same kind of work. It is a loss to the state when those who have developed this skill are turned out on a change of ministry. It is therefore now generally recognized that subordinate members of the executive should hold their posts on a permanent basis, so that their skill and experience should be available to any ministry that may happen to be in office.

If the civil service should be permanent, it follows that it should be free from party politics. The civil servant must remain the impartial servant of the state. 'Officials are servants of the whole community, not of any parties.'<sup>1</sup> If officials were to take sides in party politics, it would be difficult to maintain the permanency of tenure, promotions would be made for political, not administrative reasons, and the efficiency of the service would suffer. It is therefore for sound reasons that government servants are prevented from taking active part in politics.

As the civil service is to be the impartial servant of the state, recruitment to it is also generally made by an impartial body, such as a Public Service Commission.

It is with the subordinate members of the executive that the ordinary citizen comes most into contact, and on the whole the relations between the two are not cordial. The attitude of the public to the civil service, says Dr Finer, 'is compounded of some curiously mixed ingredients. The public is hostile to the official, it is afraid of him, misunderstands him, occasionally admires him.'<sup>2</sup>

'The civil servant is part of a machine of domination, and accession to office, according to reports from all countries, tends to produce in him an overbearing attitude, which sometimes merges into tyranny.'<sup>3</sup> This, of course, differs with

<sup>1</sup> German Constitution of 1919, article 130.

<sup>2</sup> Finer, *op. cit.*, p. 1497.

<sup>3</sup> *ibid.*, p. 1496.

different individuals, but all officials may with advantage remember the following injunction of the German code:

In their intercourse with the public, officials must always be courteous. They must avoid roughness and apathy; they must be friendly and obliging; must try to further the affairs of all who appeal to them, and readily give advice and information to persons who are ignorant of the law and official routine, providing that official duties or the legitimate interests of others are not opposed thereto.<sup>1</sup>

A great merit in any Civil Service, and one for which the German and British services have been highly distinguished, is incorruptibility. Nothing is more calculated to render an administration odious to the ordinary citizen than the discovery that he cannot get any business done by a public servant without influence in high quarters or without illegal gratification. Here again the German rule is noteworthy:

Civil servants must carry out the duties of their office with the greatest sincerity and probity, without regard to private advantage; with the greatest impartiality, with all industriousness, and care. The official must be especially on his guard against partiality. . . . No money may be accepted for benefits conferred by official activities.<sup>2</sup>

The citizen, too, on his side, must try to understand the official, and co-operate with him. He misunderstands the official, because 'the public service is the only business concern which does not advertise'.<sup>3</sup> The individual citizen may feel aggrieved or annoyed by some official action, but he must consider that the official has to act for the public as a whole, and to weigh the good of that public against that of an individual.

**§19. The judiciary.** There remains for consideration the third branch of government—the judiciary. The importance of a sound judicial system for safeguarding the rights of citizens

<sup>1</sup> Quoted by Finer, *op. cit.*, p. 1377.

<sup>2</sup> Finer, *op. cit.*, p. 1375.

<sup>3</sup> Finer, *op. cit.*, p. 1498.



cannot easily be exaggerated. 'In determining a nation's rank in political civilization,' Sidgwick has said, 'no test is more decisive than the degree in which justice as defined by the law is actually realized in its judicial administration.'<sup>1</sup> To attain this result, judges must not only be learned in the law; they must be independent, and interpret the law without fear or favour, and they must also be incorruptible.

The independence of the judges is generally sought to be secured by giving them a stable tenure of their office. First appointments are made by the executive, generally with the help of an impartial body like the Public Service Commission. Promotion and transfer raise a difficult problem; if left to the executive, they may be dangerous to judicial independence. Under the Indian constitution, appointments to the subordinate judicial service of a state are made by the executive in consultation with the Public Service Commission and the High Court, and posting and promotion are vested in the High Court. Judges of a High Court and of the Supreme Court are appointed by the President of India, the former after consultation with the Chief Justice of India, the Governor of the state, and (in case of a judge other than the Chief Justice), the Chief Justice of the High Court; the latter, after consultation with the Chief Justice of India, and such other judges of the Supreme Court and of the High Courts in the states as the President may deem necessary.<sup>2</sup>

For incorruptibility, reliance has to be placed on the character of the judges, and their own sense of duty; but additional securities may be provided in adequate salaries, and in liability to dismissal in the last resort. In England judges are liable to be removed on an address by the Houses

<sup>1</sup> H. Sidgwick, *Elements of Politics* (1879), p. 481.

<sup>2</sup> One respect in which our judicial system has been strongly criticized is the combination of executive and judicial powers in the head of the District administration—the Collector—and his subordinates. The separation of these is a much-needed reform, which has been included among the Directive Principles of State Policy in the Constitution. It has already been given effect to in Bombay, and is under consideration in several other states.

of Parliament; in India, by an order of the President, passed after an address by each House supported by a majority of the total membership of that House, and by a majority of not less than two-thirds of the members present and voting, has been presented to the President in the same session for removal on the ground of proved misbehaviour or incapacity.

Judicial systems generally contain also an unprofessional element in honorary magistrates or in Justices of the Peace,<sup>1</sup> and in the Jury. These are useful, partly because they save expense, and partly because of their educative influence. They introduce many ordinary citizens to the methods of the law, of which they would otherwise know nothing. The Jury, moreover, has, in the past, been valued as a bulwark of individual liberty. That was true at a time when government was irresponsible, and the judiciary was subservient to the executive, but it is no longer true now. Today the defects of the jury-system are at least as evident as its merits. Jurymen tend to be unduly influenced by popular likes and dislikes, and to reflect the bias of the class from which they are drawn.

**§20. Federations.** The federal form of government has attained great importance in recent times. The essence of that form of government is the distribution of power between a central government on the one hand, and several 'state' or 'provincial' governments on the other hand—the distribution being unalterable by either the central or the local government. This type of government has attained importance, because it has afforded a method by which large political unions may be formed without too great a sacrifice of local independence. A number of states may desire to act as one for certain common purposes, e.g. for defence, but to retain their independence for other purposes: they may desire union without desiring unity. A federal form supplies the solution in such a case. An agreement is made regarding the scope of the common purposes (which are consequently entrusted to a common or 'central'

<sup>1</sup> In Bombay State, honorary magistrates and Justices of the Peace do not try cases.

government), and the sphere of the existing governments (which, with the creation of the central government, become 'local' or 'provincial' governments); the agreement is embodied in a written document or 'constitution'; and the constitution is made more or less rigid. Thus in a federation the central government on the one hand, and the local government on the other, are co-ordinate, neither being superior to the other; and the citizen must obey each of two authorities, within its respective sphere. Some machinery is generally thought necessary to see to it that neither government oversteps the limits assigned to it by the constitution: this is found in a supreme court, which has the power, in the course of its judicial work, of declaring a law 'unconstitutional', and therefore 'void', if it finds that it is beyond the powers (*ultra vires*) assigned by the constitution to the authority which enacted it.<sup>1</sup>

In India the constitution of 1935 provided for the creation of an All-India Federation. The units of the Federation were to be the provinces of British India and such of the princely States as acceded to the Federation. Distribution of powers between the Federation and the Provinces was provided for by means of three lists—one on which the Federation alone was competent to legislate; another on which, similarly, the Provinces alone could legislate; and a third, called the 'Concurrent Legislative List', on which either might legislate, Federal legislation, however, having precedence over Provincial. The federal part of this constitution never became effective; but the present constitution, which came into effect on 26 January 1950, is to a great extent based on the 1935 model. The 1935 constitution, if its federal part had been effective, would have applied to the whole of the then-existing India; our existing constitution applies to India after partition.

<sup>1</sup> Thus a part of President Roosevelt's recovery programme was declared unconstitutional by the Supreme Court of the U.S.A., and several acts of the central and state legislatures (e.g. the Preventive Detention Act, 1950, and the Bombay Prohibition Act) have been similarly declared unconstitutional in parts by the Supreme Court of India.

On the other hand, India after partition has a stronger central government than would have been possible under the 1935 constitution—a fact attested by the very first article of the constitution: 'India, that is Bharat, shall be a Union' (not 'a federation') 'of states.'

## CHAPTER V

### LOCAL SELF-GOVERNMENT

**§1. Necessity of local self-government.** In a state of the modern size, a distinction between central and local government is necessary because there are limits to the territory which can be governed from one place. At the very least the government will require subordinate officials to carry out its orders throughout the length and breadth of the territory of the state, which will have to be divided into convenient areas for this purpose. This already implies a distinction between central and local government, though in this case the local government is entirely subordinate to the central government, the policy to be followed locally being dictated from the centre, which also appoints the men who are to carry out that policy.

All parts of a state's territory, however, are not exactly alike, and their needs are not exactly the same. Urban areas, for example, have different needs from the countryside, and the resources of the two are also different. If there were to be uniform administration over the whole area, it would be doubly unsatisfactory: it would do too much for certain areas, and too little for others. Either, for example, the streets of cities would not be provided with lights, or an enormous amount of money would be wasted in providing them in villages as well. Now, it is just possible that the central government should take note of all the different needs of different areas and give suitable detailed instructions to its local agents. This, however, would put too great a strain on the central government. A more practicable plan would be for the central government to trust to the discretion of the 'man on the spot', and give him freedom, subject to certain limits, to take suitable action to satisfy the special needs of his locality.

But it is the wearer who knows where the shoe pinches, and instead of the government or its agents interpreting by



themselves the needs of the different localities, it would be more satisfactory if the people themselves were consulted about their needs. For this purpose, the government may begin by inviting some influential persons to tell it of the requirements of their locality. There will thus be formed a nominated 'council' or 'board' with merely advisory functions. Gradually an elected element may be introduced; small at first, it may grow larger and larger in time, until at last it ousts the nominated element altogether, or reduces it to very insignificant proportions. Instead of being merely an advisory body, again, the council may gain the decisive voice in the management of the local affairs. When this point is reached, we have, not local government only, but local *self-government*.

Hitherto local self-government has been considered only from the point of view of *efficiency*: the government, we have seen, needs agents to carry out its will throughout the whole area of the state; the needs of different areas are different; and if these needs are to be properly served, co-operation of the people is necessary. But local self-government is necessary for yet another reason—for its *educative* value. The individual citizen in a modern state is only one of a great multitude, and if the only action he is called upon to take with reference to public affairs is to vote once every four or five years in a national election, he will in all probability be impressed with his own insignificance, and lose all interest in public affairs. Local self-government is a corrective of this tendency. Here the ordinary citizen has an opportunity to show his creative talents. Here, too, he can come to a vivid realization of the meaning of society and government—can realize, in other words, how his own interests are intimately connected with those of others, and learn, in consequence, the invaluable lesson of 'give and take'. Here, once more, he may learn the difference between irresponsible criticism and constructive achievement, and come to have a sense of the possible and the impossible in public affairs. In all these ways, local self-government can become a school for wider citizenship and statesmanship.

The besetting weakness, on the other hand, of local government is its liability to narrow views and petty feuds. For this, if for no other reason, local government needs to be constantly watched and controlled by the central government.

**§2. History of local self-government.** Local self-government has been especially a development of the nineteenth century. It is to a great extent a product of the enlarged functions which the state has taken upon itself. Hence present-day local government, as has been said, 'is not merely a matter of law and order; it is quite as much a matter of welfare'.<sup>1</sup> It was when the state began to concern itself with the health or education of the people that it began to be seen that different parts of the state have different needs; also that the central government would be overburdened by taking all the work upon itself. In England the process of democratizing local government began after 1832. Till then local government had been in the hands of a very small number of men—the Justices of the Peace in the shires, and narrow ruling cliques in most of the boroughs. But when in 1834 an Act was passed for the amendment of the Poor Law, the administration of the funds was vested in the hands of 'guardians' *elected* by those who paid the poor rates. This was followed by the Municipal Corporations Act of 1835, by which municipal corporations were made elective; by the Public Health Act of 1848, which provided for the creation of elective sanitary authorities to look after the sanitation of their respective localities; by the Education Act of 1870, which similarly established elective School Boards; and by many others. Finally, Acts of 1888 and 1894 democratized the government of counties and parishes.

The history of local government in India in modern times goes back to the Act of 1793. This Act empowered the Governor-General to appoint Justices of the Peace for the Presidency towns (Bombay, Madras and Calcutta). In addition

<sup>1</sup> Gill & Valentine, *Government and People*, p. 5.

to their judicial duties, the Justices of the Peace were also authorized to provide for sanitation and the maintenance of the streets, and the expenditure on these matters was to be defrayed by an assessment on houses and lands. The beginning of local government was thus through nomination, and though several changes occurred, this continued to be the ruling principle till the 'seventies of the nineteenth century. The elective principle came only in the 'seventies (1872 Bombay; 1876 Calcutta; 1878 Madras). With regard to district towns, we notice the same development. The Act of 1850, which permitted the creation of municipalities in the districts, provided for nomination of commissioners to manage municipal affairs. Later acts, passed in the 'sixties, for Bengal, the U.P. and the Punjab, made election permissive, but the permission was little used. It was in Lord Mayo's resolution of 1870 that the elective principle was emphasized, and the necessity of local co-operation for the management of local affairs was set forth:

Local interest, supervision and care are necessary to success in the management of funds devoted to education, sanitation, medical, charity and local public works. The operation of this Resolution in its full meaning and integrity will afford opportunities for the development of self-government, for strengthening municipal institutions, and for the association of Natives and Europeans to a greater extent than heretofore in the administration of affairs.

The elective principle was accordingly extended or introduced by various Acts, passed in the different provinces between 1871 and 1874. Even so, however, it was not widely applied except in the Central Provinces.<sup>1</sup> It was the famous Resolution of Lord Ripon's government (1882) which marked the really great advance in local self-government. That

<sup>1</sup> In Bombay, Act VI of 1873 gave the Governor-in-Council power to direct that the whole or any part of the non-official members should be appointed by election; but it was not till 1882 that the elective element was actually introduced in respect of one-half of the total number of members in the ten city municipalities then existing.

Resolution advocated local self-government principally as a means of political and popular education. In the first instance, perhaps, introduction of local self-government might bring loss of efficiency; but—

It is not, primarily, with a view to improvement in administration that this measure is put forward and supported. It is chiefly desirable as an instrument of political and popular education. His Excellency in Council has himself no doubt that in course of time, as local knowledge and local interest are brought to bear more freely upon local administration, improved efficiency will in fact follow. . . .

The task of administration is yearly becoming more onerous as the country progresses in civilization and material prosperity. The annual reports of every Government tell of an ever-increasing burden laid upon the shoulders of the local officers. . . . Under these circumstances it becomes imperatively necessary to look around for some means of relief; and the Governor-General in Council has no hesitation in stating his conviction that the only reasonable plan open to the Government is to induce the people themselves to undertake, as far as may be, the management of their own affairs.

Local self-government was necessary, in other words, first, to relieve the burden of the central government, and secondly, as a means of political education.

In accordance with the policy of the Resolution, Acts were passed in 1883-4 which greatly altered the constitution and powers of municipal bodies. The elective principle was extended, and the proportion of elected to the total number of members was laid down by law. (In Bombay this was fixed at one-half.) The maximum proportion of nominated officials was also laid down (being one-fourth in Bombay). Many towns were permitted to elect non-official chairmen.

In municipalities, the principle of self-government was only carried further by the new Acts; in rural areas, it was now introduced for the first time. Hitherto a local cess had been levied for local improvements, and the proceeds had been administered by committees nominated by the Government.

Now the committees were replaced by Local Boards. In the constitution of these boards the non-official element was to preponderate, and the elective principle to be recognized, as in the case of municipalities. The Bombay Act (passed in 1884) set up Taluka and District Boards. At least one-half of the members were to be elected, but the chairmen were to be officials—the Collector for the District Board, and the sub-divisional officers for the Taluka Boards.

The hopes of the reformers of 1882 were not realized. 'The local bodies were ill-equipped with funds, and interest in local affairs and capacity to handle them were slow in developing, and meanwhile the material needs of the country could not wait. What happened therefore was that the educative principle was subordinated to the desire for more immediate results.'<sup>1</sup> The official element dominated the local bodies, and local government continued to be, as in the past, just one of the many activities of the District Officer. 'The broad fact remained that in a space of over thirty years the progress in developing a genuine local self-government was inadequate in the greater part of India.'<sup>2</sup>

The Decentralization Commission, which was appointed in 1907 to consider the administrative system of India and to report whether the system of government could be 'better adapted to meet the requirements and promote the welfare of the different provinces', and which actually submitted its report in 1909, did not take an altogether gloomy view of local self-government. 'Those', say the Commission, 'who expected a complete revolution in existing methods in consequence of Lord Ripon's pronouncement were inevitably doomed to disappointment. The political education of any people must necessarily be slow, and local self-government of the British type could not at once take root in Indian soil.'<sup>3</sup> The want of success of the existing system seemed to the

<sup>1</sup> *Montagu-Chelmsford Report*, §13.

<sup>2</sup> *ibid.*

<sup>3</sup> *Report of the Decentralization Commission*, §807.



Commission to be due partly to the fact that the local bodies did not possess real powers and responsibilities, owing to want of funds and excessive control. They therefore recommended larger powers and greater independence for local bodies.

The Montagu-Chelmsford Report of 1918 emphasized the same policy. The pronouncement of 20 August 1917 had declared 'the gradual development of self-governing institutions' as the goal of British policy in India. To Mr Montagu and Lord Chelmsford it seemed that self-government must begin from the lowest levels: 'popular growth must be more rapid and extensive in the lower levels than in the higher.' It followed that 'there should be, as far as possible, complete popular control in local bodies and the largest possible independence for them of outside control'.<sup>1</sup> 'It is of the utmost importance to the constitutional progress of the country', the Report said, 'that every effort should be made in local bodies to extend the franchise, to arouse interest in elections and to develop local committees, so that education in citizenship may, as far as possible, be extended, and everywhere begin in a practical manner. . . . Responsible institutions will not be stably-rooted until they are broad-based.'<sup>2</sup> Local self-government, too, was by the Act of 1919 transferred to the control of ministers responsible to the legislatures. In every province these new powers were used to make local bodies more popular—to lower the franchise, to increase the elective element, and to free local bodies from official control. In Bombay a Village Panchayat Act had been passed in 1920; this was superseded by another Act of 1933; a Local Boards Act was passed in 1923, and a Municipal Boroughs Act in 1925. These Acts made Local Boards and municipalities almost wholly elective; in the case of the former, the number of elective members must not be less than three-fourths of the whole; in the latter, not less than four-fifths. The chairmen,

<sup>1</sup> *Montagu-Chelmsford Report*, §188.

<sup>2</sup> *ibid.*, §192.

too, were made elective; the franchise was extended; and larger powers were given to local bodies. Finally, with the inauguration of the 1935 Constitution, Local Boards and municipalities were made wholly elective.

**§3. Problems of local government.** The principal problems which arise in the construction of local government units are these: What should be the area of each unit? How should local units be organized? What functions should be assigned to them, and what should be their relation to the central government? How should they raise and spend money?

**§4. Areas.** In delimiting the areas of units of local government, the following considerations have to be borne in mind:

(i) If any part or district has had a long common tradition and has developed a common sentiment, it should be recognized as a unit of local government. Such sentiment will go a long way in drawing out the best energies of the people of the locality in the management of its affairs. In India the village has been through the ages a historical unit of this kind.

(ii) An important distinction, and one which is universally made, is that between town and country. This is a distinction based on density of population. The aggregation of large numbers of people in a small area gives rise to a variety of needs—of sanitation, housing, water-supply, and roads, for example—which the inhabitants of the countryside do not feel equally keenly. Cities, therefore, are always formed into separate units of local government. At the same time the limits of an urban area are not always easy to draw, because such an area often merges by insensible gradations into the countryside.

(iii) Different functions require different areas for effective and successful operation. A village may maintain a primary school, but it cannot maintain a hospital. There have therefore to be small units and bigger ones. That being so, a smaller unit should form part of a bigger unit, and of only one such, so that we shall have an orderly 'multiple' system, and escape the confusion which obtained, for example, in English local

government until its reform towards the end of the nineteenth century. In England, as new needs in local government were felt, special areas were created for the satisfaction of each need, with a special body to look after it. There were thus unions for the relief of the poor, sanitary districts, school districts, lighting districts, and numerous other areas, all overlapping and intersecting one another. It was 'a chaos of authorities, a chaos of jurisdictions, a chaos of rates, a chaos of franchises, a chaos worst of all of areas'. It was the Local Government Acts of 1888 and 1894 that cleared this confusion.

In the Bombay State, the village, the taluka, and the district, for long units of bureaucratic revenue and general administration, have been adopted as units for local self-government. What areas should form municipal districts; which among these, again, being bigger and more important, should be distinguished as municipal boroughs—these questions have been left to the decision of the Government. Organs of local self-government have been created in each of these units: panchayats in villages (though not in all), local boards in talukas and districts (though the taluka boards were abolished with effect from 1 April 1938), councils in the so-called 'district municipalities' and municipal boroughs. Panchayats are at present regulated by the Bombay Village Panchayats Act (1933), district local boards by the Bombay Local Boards Act (1923), district municipalities by an Act of 1901, and municipal boroughs by an Act of 1925.<sup>1</sup> The Acts regulating local boards and municipalities allow any local board or municipality to join any other local body for common purposes.

The Bombay, Poona and Ahmedabad municipalities stand apart from other municipalities. They are called 'municipal corporations'; the Acts by which they are regulated are much more elaborate than either the District Municipal Act of 1901 or the Municipal Boroughs Act of 1925. Bombay Munici-

<sup>1</sup> Subject, of course, to subsequent amendment of the Acts in some particulars.

pality is governed by an Act of 1888 (with subsequent amendments); Poona and Ahmedabad by the Bombay Provincial Municipal Corporations Act 1949.

**§5. Organization : general characteristics.** The organization of local bodies generally follows the model of the central government. In democratic states it is usually of the representative type. A primary meeting of all citizens is possible in the lowest local unit, and is found in the Communes in Switzerland, the 'towns' of the New England States of the U.S.A., the smallest parishes in England, and other places. These units correspond to the village in India. The American 'town meeting' is held once a year; it elects the officers of the township for the ensuing year, votes for the prospective expenditure of money and the basis of its assessment, and considers other local matters that may be brought before it. The meeting of the English parish or of the Swiss Commune does similar work. With us there is no primary meeting of all citizens with the same functions, but the Bombay Village Panchayats Act (1933) provides that a meeting of all adult residents of the village should be called at certain times and a statement of the panchayat's accounts together with a report on the administration of the preceding year, and the programme of work proposed for the year following, should be read out and explained at the meeting.<sup>1</sup>

The organization of local bodies is, then, generally of the representative type, just like that of the state. There are differences, however. In the first place, the same amount of separation between legislative and executive or administrative work is not necessary in local government as in the government of the state. There is a difference in scale between the two governments, and it is possible for the local representative body to take decisions on details. The same body may therefore lay down general rules, and also give specific orders that specific things be done. This is, of course, true only up to a

<sup>1</sup> Section 36, 4.

limit, and even in local government there is need of experts corresponding to the Civil Service in the central government. Some of the failures of local government in India have arisen from a tendency on the part of elected persons to interfere too much in the details of administration, which should be left entirely to the paid official.<sup>1</sup>

Another difference between state government and local government is that as the latter is constantly watched and controlled by the former, there is not the same need in it of an inside check on the representative body; in other words, the local legislative body need not be bicameral.

#### **§6. Organization of District Local Boards in Bombay.**

District Local Boards in Bombay are constituted as follows:

(i) Each board is to consist wholly of elected members. Until 1938 there had been provision for nominated members (who were not to be more than one-fourth of the whole number), but since that year local boards have been made wholly elective.

(ii) The number of members of each local board, the number and extent of the constituencies, and the number of members to be elected by each constituency, are prescribed by the State Government. Seats may be reserved for women, scheduled castes, and scheduled tribes for a period of ten years from the coming into effect of the Constitution (i.e., from 26 January 1950).

(iii) All persons above the age of 21 who have resided in a particular constituency for a year, or who have been taxed to local fund cess during the preceding year, are entitled to vote at a local board election.

(iv) Any person whose name is entered in the voters' list may stand as a candidate for election, unless he is disqualified as being a servant of the local board, or as having any interest in any contract with it, etc.

(v) The members' term of office is three years.

<sup>1</sup> *Report of the Indian Statutory Commission (Simon Commission)*, vol. I, p. 310.



(vi) The president and vice-president are elected by the board. They hold office during their membership of the board. The duty of the president is to preside at meetings of the board, to watch its administration and to exercise supervision and control over all officers and servants.

(vii) Every local board must appoint a standing committee, consisting of not less than five and not more than nine members, and may appoint a public health committee, or other committees.

(viii) Every local board may appoint and pay such officers and servants as it may deem necessary and proper to maintain for the efficient execution of its duties.

**§7. Municipalities.** The organization of municipalities and municipal boroughs is very similar to that of local boards. The electoral divisions of a municipality or municipal borough are known as 'wards'. The term of office of the municipal president and vice-president is determined by the municipality itself (subject, however, to the condition that it must not be less than one year nor more than three). A municipal borough *must* appoint a Chief Officer and may appoint a health officer or an engineer. A Chief Officer may not be removed, reduced or suspended unless by the votes of at least two-thirds of the whole number of councillors.

**§8. Village Panchayats.** For centuries prior to the establishment of British rule in India, panchayats used to dispense justice in villages. These institutions decayed during the British period. The Montagu-Chelmsford Report emphasized the need of building representative institutions from the bottom upwards, and since 1920 attempts have been made to revive the panchayat. The organization of panchayats in Bombay State is regulated by an Act passed in 1933, which has been amended in certain particulars by later enactments.

(i) Every revenue village with a population of not less than 2,000 *must* have a panchayat. In other villages a panchayat may be instituted by the State Government.

(ii) A panchayat consists wholly of elected members, nominations and *ex officio* membership having been abolished in 1939. Their number, which must be not less than seven nor more than fifteen, is determined by the Collector. The State Government may reserve certain seats for women, scheduled castes and scheduled tribes for a period of ten years from the commencement of the Constitution.

(iii) All adult persons who ordinarily reside in the village and all adult persons who own in the village a house assessed to house tax or land assessed to the local cess are entitled to vote.

(iv) The term of office is three years.

(v) The panchayat is presided over by a Sarpanch who is elected by the members from among their own number. The panchayat also elects one of its members to be deputy Sarpanch. A Sarpanch and deputy Sarpanch hold office for the term of the panchayat (like the president and vice-president of the district local board).

(vi) Every panchayat must appoint a Secretary. The qualifications, powers, duties, remuneration and conditions of service (including disciplinary matters) of the Secretary are prescribed by the Government.

(vii) The other servants of the panchayat are appointed by the Sarpanch, who pays their salaries from the village fund and has powers to fine, suspend, or dismiss any of them.

(viii) The budget of the panchayat has to be approved by the district local board.

(ix) Every panchayat must at its first sitting elect out of its own members five persons to constitute a Nyaya Panchayat. The State Government shall direct which of the judicial powers that are permitted by the Village Panchayat Act to be conferred on Nyaya Panchayats shall be exercised by any particular Nyaya Panchayat.

**§9. Functions, and relation of local to central government : general principles.** 'The matters assigned to independent local organs,' says Sidgwick, 'should be those in

which local separation of interests is most clearly marked, local knowledge most important, the need of uniformity and system least evident, and the co-operation of private and governmental agencies likely to tell most.<sup>1</sup> Some functions of government are of a vital character; defence of the state against external enemies, for example, is one such. Then there are other matters—e.g. currency or postal communication—in which the advantages of uniformity are very great. Such matters properly fall within the sphere of the central government. In other cases, however, the people of a certain locality only have a certain common interest. If the streets of a city, for example, are asphalted and lighted, or if a satisfactory drainage system is provided for it, this would directly benefit the people of that city only. It would be unfair that other people should bear the cost of the provision of such amenities; the people of the locality may, therefore, properly be called upon to bear that cost. But if they are to bear the cost, they may also have the management in their hands; for they, with their local knowledge, would be best able to manage the business economically, and would also be most interested in such economic management. Matters like sanitation, medical relief, local roads, education, etc., would, therefore, appropriately be entrusted to the management of local bodies.

The separation of interests, which thus appears to be the principal determinant of the functions of local bodies, is, however, never complete: it is only a matter of degree. Sanitation, for example, is generally a function of local bodies; but it would be hard to say that none except the people of a particular locality are concerned to see that they enjoy good health. The well-being of one part of the population of a state cannot be a matter of indifference to the rest. Modern science has emphasized this conviction by demonstrating how disease is caused by germs which travel through the air, and how, therefore, a locality affected by disease is a danger to others.

<sup>1</sup> Sidgwick, *Elements of Politics*, pp. 516-17.

It has, at the same time, annihilated distance, and brought the localities nearer to the centre. Local bodies, therefore, cannot be autonomous, and there cannot be a clear-cut distinction between their functions and those of the central government. 'Local authorities and central government are part and parcel of one governmental system, and their relationship is one of partnership and collaboration in a single organism possessing one common ultimate purpose.'<sup>1</sup> This collaboration is achieved by the central government laying down general principles, and then handing over the actual administration to local bodies (which it must then inspect in order to see that the principles are carried out in the actual administration). Thus 'the authority which is most conversant with principles', as Mill says, is 'supreme over principles', while 'that which is most competent in details' has the details left to it. And the central government is superior in comprehension of principles, Mill explains, 'not only by reason of the probably great personal superiority of the individuals composing it, and a multitude of thinkers and writers who are at all times engaged in pressing useful ideals upon their notice,' but also because 'it has the means of knowing all that is to be learnt from the united experience of the whole kingdom', whereas 'the knowledge and experience of any local authority is but local knowledge and experience, confined to their own part of the country'.<sup>2</sup>

**§10. Functions of Local Boards in Bombay.** The Bombay Local Boards Act (1923), Section 50, lays down the duties of Local Boards as follows:

It shall be the duty of local boards, so far as the local fund at their disposal will allow, to make adequate provision for the areas respectively subject to their authority in regard to the following matters, namely:

(a) the construction of roads and other means of communication and the maintenance and repair of all roads and other means of communication vesting in them;

<sup>1</sup> Finer, *English Local Government*, p. 9.

<sup>2</sup> Mill, *Representative Government*, p. 357.

(b) the construction and repair of hospitals, dispensaries, markets, dharmashalas and other public buildings . . . ;

(c) the construction and repair of public tanks, wells, and water works . . . ;

(d) the provision for primary education in the district and its expansion;

(e) public vaccination, and sanitary works and measures necessary for public health;

(f) the planting and preservation of trees by the side or in the vicinity of roads vesting in such boards;

(g) the maintenance of any property vesting in them;

(h) [provision for anti-rabic treatment of indigent persons].

Besides these there are discretionary powers, among which occur the following:

(j) the establishment and maintenance of model farms . . . ;

(k) the establishment and maintenance of relief and local relief works in time of famine or scarcity;

(l) educational objects other than those set forth in clause (d) . . . ;

(m) the construction, management, and maintenance of light railways and tramways;

(n) any other local works or measures likely to promote the health, safety, comfort or convenience of the public.

**§11. Functions of municipalities.** The functions of municipalities and municipal boroughs are also partly obligatory and partly discretionary. The following are included in the obligatory list: lighting, watering, and cleansing public streets; abatement of public nuisances; protection against fire; regulation of dangerous or offensive trades or practices; reclamation of unhealthy localities; disposal of the dead; construction and maintenance of public streets, markets, latrines, drains, washing-places, and the like; water-supply; vaccination; hospitals and dispensaries; primary education; measures of precaution and relief against epidemic diseases; relief in time of famine or scarcity; provision for anti-rabic treatment of indigent persons, and for lunatics and lepers.



The discretionary matters include public parks, gardens, museums, libraries; education above the primary stage; taking a census; making a survey; maintenance of dairy farms; provision of music; construction of sanitary dwellings for the poor; light railways and tramways, and any other measure likely to promote the public safety, health, convenience, or education.<sup>1</sup>

**§12. Functions of village panchayats.** The village panchayat has similar duties in the village. It has to make 'reasonable provision' in regard to the supply of water for domestic use; the cleansing of the public roads, etc.; the construction, maintenance, and repair of public roads, etc.; sanitation and conservancy; public health; lighting of the village; provision and maintenance of burning and burial grounds. It may also make provision for carrying out within the village any other work or measure which is likely to promote the health, safety, education, comfort, convenience, or social or economic well-being of the inhabitants of the village, e.g., crop experiments, or village libraries and reading-rooms, promotion of cottage industries, etc. Lastly it has to act as agent for the district local board and execute such work as that board may delegate to it.<sup>2</sup>

Under the Indian system, and also the English, from which the former has been copied, local bodies can only perform such functions as the law has specially conferred upon them. In some other countries, e.g. in Germany and Switzerland, a different system prevails, and local bodies are competent to perform any function which is not specifically forbidden to them. Some thinkers prefer this system to the other. Professor Laski considers it to be 'the secret of the success which has attended municipal effort in Germany'. 'It is under these powers', he says, 'that German towns have, without recourse to any legislative authority, set up their

<sup>1</sup> Bombay District Municipal Act, 1901, Sections 54-6; Bombay Municipal Boroughs Act, 1925, Sections 68-71.

<sup>2</sup> Bombay Village Panchayats Act, 1933, Sections 26-8.

theatres, built their tramways, embarked upon municipal trading, . . . promoted music, the drama, learning, dispensaries for the tubercular, municipal savings banks, house building, the guardianship of illegitimate children, bureaux of legal advice, and unemployment and fire insurance. "The German town today," says a well-known authority upon them, "is the standard-bearer in intellectual, economic and social progress." <sup>1</sup>

It may be doubted, however, whether the English system actually operates as a handicap to municipal progress in England. It certainly does not so act in India. In theory local bodies may not be able to exercise any function for which they cannot show distinct statutory authority, but actually 'this restriction is not so severe as it may seem at first sight, because the powers which are conferred on them by statute are very wide.' <sup>2</sup>

**§13. Government control in Bombay.** In Bombay the Government can control local bodies in the following ways:

(i) A president or vice-president of a local board or of a district municipality is removable from office by the Government for misconduct, or neglect of or incapacity to perform his duty.

A member of a local board or of the council of a municipal borough is similarly removable on the recommendation of the local body. (In the case of a municipal borough the recommendation must be supported by at least two-thirds of the whole number of members.)

In the case of village panchayats power of removal rests with the district local board, with the previous sanction of the Collector.

(ii) The by-laws of local boards and municipalities must be approved by the Government.

(iii) The Government has a veto on local taxation. According to the Local Boards Act, Section 103, 'if it shall

<sup>1</sup> *Grammar of Politics*, p. 421.

<sup>2</sup> G. M. Harris, *Local Government in Many Lands*, p. 186.

at any time appear to the Government . . . that any tax leviable by a district local board is unfair in its incidence, or that the levy thereof . . . is obnoxious to the interest of the general public, . . . the Government may require the said district local board . . . to take measures for removing any objection which appears to it to exist to the said tax, and if . . . such requirement shall not be carried into effect to the satisfaction of the Government, the Government may . . . suspend the levy of such tax . . . until such time as the objection thereto shall be removed'.

An identical provision is made by the Municipal Boroughs Act, Section 102, with regard to municipal boroughs.

The Government can suspend the levy or imposition of any tax levied by a village panchayat also.<sup>1</sup>

(iv) The Government can control the expenses of local bodies' establishments. If in the opinion of the Director of Local Authorities the number of persons employed, or proposed to be employed, by a district local board or a municipality, or the remuneration assigned to those persons or to any particular person, is excessive, the board or the municipality must, on the requirement of the Director, reduce the number or the remuneration. The Board or the municipality may appeal against the Director's order to the Government, whose decision is final.

In the case of panchayats, similar power is given to the Collector as well as to the district local board, and an appeal lies to the Director of Local Authorities, whose decision is final.

The rules laying down the detailed conditions of service for the servants of local boards and municipalities have also to be approved by the Government. Appointments which do not carry a salary of more than one hundred rupees per month, may, however, be created by a municipality without Government approval.

<sup>1</sup> Bombay Village Panchayats Act, Section 89, 4.

(v) By the Bombay Local Fund Audit Act (1930), the accounts of local bodies are liable to audit 'yearly or at such period or periods as may be required by the Director of Local Authorities'; the auditor makes a report to the Director drawing attention to any illegalities or irregularities which he may have observed in the accounts, and which may not have been explained, or removed by the local authorities; stating also whether the amounts to which the defects or irregularities relate should, in his opinion, be 'surcharged' or 'charged' (i.e. recovered from the person responsible for the defect or irregularity). The Director may then make an appropriate order.

(vi) Government officers have general powers of inspection and supervision of the work of local boards and municipalities; the Collector can require a local board or municipality to take certain matters into consideration; he can suspend the execution of any of their orders or resolutions which in his opinion is likely to cause injury or annoyance to the people, or to lead to a breach of the public peace, or is unlawful. (Action of this kind has to be reported to the Director of Local Authorities, who in turn must report it to the Government.) In cases of emergency he may order the execution of some work (in which case, again, he must report his action to the Director). The Government may order an inquiry into the administration of a local board or municipality; where a board or municipality has committed default in performing any duty, the Government may appoint some person to do it; finally, in case of incompetence, or persistent default, or abuse of powers, the Government may either dissolve a local board or municipality or supersede it for a certain period.

Similar powers exist with respect to panchayats; with this difference, however, that in their case, the district local board has the power of inspection and supervision equally with the Collector.

The powers of the Government with reference to local bodies may appear excessive. In practice, however, they are

exercised with moderation, and considerable latitude is allowed to local bodies. In any case the control of local bodies with us is not so stringent as in England. Indeed, as the Indian Statutory Commission say, 'the present state of efficiency of local government administration in Great Britain has been largely due to an ever-increasing pressure by the departments of the Central Government'. And the failure to realize the need for control in India has been, in their opinion, 'a grave error'.<sup>1</sup>

**§14. Local finance.** The revenue required by local bodies is derived from various sources. (i) In the first place, there are fees for different services, payable by those who utilize them. A toll or a water rate is of this nature. (ii) When, however, a service requires some capital expenditure, which will spread its benefit over a number of years, it is only fair that the burden of expenditure, too, should be spread over a number of years; such expenditure, therefore, should be met by means of a loan. But local bodies cannot be allowed to contract loans freely, because of the danger that the future may be sacrificed to the present, and an unfair amount of burden thrown on future generations. The Government, therefore, has to control borrowing by local bodies. In the Bombay Loans Act (1914), a local authority which desires to obtain a loan has to submit an application to the Government stating the purpose for which the loan is required, the amount which it is proposed to borrow, the fund on the security of which it is proposed to borrow, the proposed rate of interest, etc. The Government will then make such inquiry as it thinks necessary, and either sanction or reject the application. (iii) Thirdly, there are government grants. The well-being of the people of a locality, we have seen, is not the concern of that locality only; it is a concern of the whole nation. That is why

<sup>1</sup> Report, vol. I, p. 310.



certain duties are made *obligatory* on the localities by the state. That is also the justification of government grants for the maintenance of local government services. In England, the Government makes grants for police (which is there a local matter), for education, for the construction of new roads, for housing, public health, etc. In the Bombay State, the Government similarly gives grants for education, sanitation, medical relief, village water-supply, etc. Indeed government grants form a large part of the income of our local bodies. (iv) Lastly, there is the revenue from taxation. In almost all countries local authorities are restricted by law to certain taxes. In England local authorities are restricted to the 'rate', which is a tax on the annual value of lands and buildings. Most other countries allow a variety of taxes.

**§15. Income and expenditure of local boards in Bombay.** The Bombay Local Boards Act allows local boards to impose, with the sanction of the Director of Local Authorities, any tax which the State legislature has power under the Constitution to impose in the state. The main source of the income of local boards, however, is the cess of three annas in the rupee of land revenue which the State Government levies along with land revenue, and makes over to the local board after deducting the cost of collection. Other important sources are (i) tolls on roads and ferries, (ii) octroi (levied by only one board), and (iii) government grants. Government grants are now being made on a generous scale: besides the statutory grant of 15 per cent of land revenue on lands within the limits of the district (excluding those under municipalities or village panchayats), the Government makes grants for civil works, medical relief, elections, village water-supply, etc.

The chief items of expenditure of local boards are (i) civil works, (ii) medical relief, (iii) village water-supply, and (iv) administration. Education used to be, until 1949, the main head of expenditure, but it has now been entrusted to independent School Boards. A certain amount from the local fund

cess has to be paid annually by the local boards to the School Boards for the purposes of primary education.

**§16. Income and expenditure of municipalities.** The taxes allowed by law to municipalities are (i) property taxes, (ii) tax on vehicles, (iii) toll on vehicles or animals, (iv) octroi, (v) taxes for municipal services (e.g. a sanitary cess, a drainage tax, a water rate, a lighting tax), (vi) tax on pilgrims, (vii) a special educational tax (only in case of municipal boroughs); and (viii) any other tax which, under the Constitution, the state legislature is competent to impose. Actually, most municipalities draw their tax revenue from a variety of sources, many of the sources mentioned above (Nos. i to vii) being utilized, besides a variety of other taxes like those on shops, on professions, on cycles, on theatres, etc. Then there is the revenue from municipal property (such as lands or investments), fees from educational and medical institutions, etc. Lastly, there are government grants, though these do not make such a large proportion of the total income as in the case of local boards.

The main items of expenditure for municipalities are (i) general administration, (ii) public safety (lighting, protection against fire, etc.), (iii) water-supply, (iv) drainage and conservancy, (v) medical relief (including vaccination), (vi) public works (chiefly roads), and (vii) education.

**§17. Income of village panchayats.** According to the Bombay Village Panchayat Act, a panchayat *must* levy a tax upon the owners or occupiers of houses, and of lands which are not subject to agricultural assessment, within its limits, and at least one of the following, as directed by the Government:

- (i) a pilgrim tax;
- (ii) a tax on fairs, festivals and entertainments;
- (iii) a tax on sale of goods;
- (iv) octroi;
- (v) a tax on marriages, adoptions and feasts;
- (vi) a tax on shops and hotels;

- (vii) a tax on premises where machinery is run for any purpose other than a domestic or agricultural purpose;
- (viii) a fee on markets and weekly bazaars;
- (ix) a fee on cart stands;
- (x) a fee for supply of water from wells and tanks vesting in it, for purposes other than domestic use;
- (xi) any other tax which the State Government has, under the Constitution, power to impose, and which has been approved by the District Local Board and sanctioned by the State Government.<sup>1</sup>

The State Government must pay to a village panchayat three-fourths of the salary and allowances of its secretary, and a grant equal to fifteen per cent of the land revenue or twenty-five per cent of the local fund cess, whichever is greater.<sup>2</sup>

Fees levied for the institution of suits before the Nyaya Panchayat, and fines decreed by the latter, and income from any property vesting in the panchayat, also go into the village fund.

The district local board has power to increase the taxation of a panchayat if in its opinion the income of a panchayat is below what is necessary for the proper discharge of its duties. §18. **Minor local bodies.** Besides local boards, municipalities, and village panchayats, there exist local bodies of minor importance, in town and in country, which may be briefly noticed.

(i) *Notified Area Committees.* These are miniature municipalities intended for areas intermediate between villages and municipalities. The Bombay District Municipalities Act (1901) permits the Government to 'notify' a town which is the headquarters of a taluka or within one mile of a railway station, and to constitute a committee in it. All members of such a committee are appointed by the Government. The

<sup>1</sup> Bombay Village Panchayat Act, 1933, Section 89.

<sup>2</sup> There is, at the time of writing (March 1955), a bill before the State Legislature according to which a lump sum grant of 30 per cent of the land revenue will be made by the Government to the village panchayat.

Government also prescribe what sections of the Municipal Act are to apply to the area.

The number of notified areas in 1950-1 was only 3.

(ii) *Village Sanitary Committees.* These are constituted under the Bombay Village Sanitation Act of 1889. The object in forming such a committee in a village is to improve the sanitary condition of the village. A sanitary committee consists of three or more adult householders who are residents of the village, appointed by the Collector. It has no power to impose taxes, but may raise by voluntary subscription any sum of money required for necessary works. If the amount that is required is not forthcoming, it may be raised by a rate fixed with the approval of the Collector. The aggregate amount so charged must not exceed one-half of the amount leviable as local fund cess, except with the permission of the Collector.

There were 9 sanitary committees in the Bombay State in the year 1950-1.

**§19. The Bombay Municipality.** The framework of the present government of the Bombay Municipality is laid down in the City of Bombay Municipal Act (Act III of 1888), though this has been amended from time to time.

Under the Act the municipal government of the city is entrusted to seven authorities: (i) the Municipal Corporation, (ii) the Standing Committee, (iii) the Improvements Committee, (iv) the Bombay Electric Supply and Transport Committee, (v) the Education Committee, (vi) the Municipal Commissioner, and (vii) the General Manager of the Bombay Electric Supply and Transport Undertaking.

The Corporation is the governing body of the Municipality; except as otherwise expressly provided in the Act, the municipal government of the city vests in it. The Commissioner is the head of the executive, subject, whenever expressly directed in the Act, to the approval of the Corporation or of the Standing Committee. The Standing Committee may be called the Finance Committee of the Corporation. Its functions are: to scrutinize the budget submitted by the Commissioner, and

after making whatever changes it may deem necessary, to present it to the Corporation; to sanction contracts; to sanction the Establishment schedule submitted by the Commissioner; to frame service regulations; to sanction investments of surplus moneys; to sign cheques; to conduct a weekly scrutiny of accounts, etc.

The Corporation consists at present of 124 members, all elected by different wards.<sup>1</sup> The elections in the wards are by adult franchise. The term of the Corporation is four years.

The Standing Committee consists of 16 members elected by the Corporation. After every General Election a new Standing Committee is elected. At the end of one year half the members retire by drawing lots, and their places are filled by fresh election. The same thing happens in the case of the other half at the end of the second year.

The Improvements Committee is constituted on the model of the Standing Committee. It consists of 16 members elected by the Corporation, and one-half the number retire every year. Purchase and sale of land up to a certain limit, and all improvement and development schemes, must be sanctioned by this Committee. The Education Committee is in charge of primary education. It, too, consists of 16 members, half of them retiring every year. Four of the sixteen members are non-councillors.

Apart from the four statutory committees, there are at present four special committees established by the Corporation within its own discretion for better dispatch of business. All matters which fall within the sphere of a special committee are in the first instance referred to it, and then come before the Corporation with its recommendations.

<sup>1</sup> Prior to 1952 there used to be representatives of special interests—(Trade Unions, Chambers of Commerce, the Millowners' Association, and the University)—and also three *ex-officio* members on the Corporation. An Act of 1950 did away with these representatives and *ex-officio* members. Another Act of the same year extended the territorial limits of the municipality to include the suburban district.



The President of the Corporation, known as the Mayor, is elected by it annually. The Chairmen of the Committees are similarly elected by them.

The Commissioner is appointed by the Government for a term of three years. He is usually a member of the Indian Civil Service. The Commissioner must be removed from office if five-eighths of the total number of councillors demand his removal.

The Commissioner is assisted by three Deputy Commissioners and one Assistant Commissioner, who are appointed by the Corporation with the approval of the Government. Then there are heads of the different departments—the City Engineer, the Health Officer, the Assessor and Collector, the Chief Accountant, etc.—who are similarly appointed. Lastly there is the Municipal Secretary, who is also appointed by the Corporation. All appointments carrying a minimum salary of Rs 500 are made by the Corporation. Other appointments are made by the Commissioner. Appointments carrying a salary of Rs 300 and above must be made in consultation with the State Public Service Commission. Regulations relating to service are made by the Standing Committee, but require confirmation of the Corporation, and, in the case of those referring to pensions, also of the Government.

The functions of the Corporation, like those of other municipalities, are partly obligatory and partly discretionary; nor are they different from those of other municipalities.

The main sources of the Bombay Municipality's revenue are:

- (i) Property taxes; these include (a) the General tax at 17 per cent, (b) water tax at  $3\frac{3}{4}$  per cent, (c) halalkhore tax at 3 per cent, and (d) fire tax at  $\frac{3}{4}$  per cent, of rateable value.
- (ii) Taxes on vehicles and animals.
- (iii) Town duties.
- (iv) Licence fees.
- (v) Stallage (Market) rents and slaughter-house fees.
- (vi) Grants from the Government.

Of these the most important are the property taxes. More than two-thirds of the total income is derived from them. In the year 1954-5, for instance, of the expected total income of Rs 9,20 lakhs, about Rs 6,30 lakhs will be from the property taxes. Town duties are expected to bring in about Rs 72 lakhs, and fees from markets about Rs 34 lakhs. On the expenditure side the chief items are: General administration, Rs 27 lakhs; education, Rs 1,05 lakhs; street cleaning, Rs 1,25 lakhs; medical relief, Rs 93 lakhs; roads and drains, Rs 49 lakhs; water works, Rs 44 lakhs; public works, Rs 32 lakhs.

The relations of the Municipality with the Government leave to the former greater autonomy than is the case with other municipalities. Broadly and in the last resort, of course, the Government has the power of control. The Government will see, for example, that the budget is balanced; and in certain cases of default, the Government has power to provide for the performance of the neglected duty. The head of the municipal executive, too, is a nominee of the Government; the by-laws made by the Corporation, appointments of Heads of Departments, regulations regarding pensions, have to be approved by the Government; and loans require the sanction of the Government. All this, however, leaves not a little power to the Municipality, and on the whole that power has been well used, thanks to 'a strong executive responsible to the Corporation and an enlightened Corporation watchful over its executive'.

**§20. Poona and Ahmedabad Municipalities.** As mentioned above, the Poona and Ahmedabad municipalities are governed by the Bombay Provincial Municipal Corporations Act 1949. Poona became a Corporation with effect from 15 February 1950, and Ahmedabad from 1 July 1950. The constitution of Poona and Ahmedabad municipalities is modelled on that of Bombay. There are five municipal authorities in each: (1) a Corporation, (2) a Standing Committee, (3) a Municipal Commissioner, (4) a Transport Committee, and (5) a Transport Manager. The Corporation consists of a

certain number of councillors elected at ward elections as fixed by the Government (there are at present 65 in Poona and 64 in Ahmedabad). The elections are by adult franchise. The term of office is four years. For the first two elections a certain number of seats are reserved for Harijans. The Standing Committee consists of 12 members elected by the Corporation. One half of its members retire every year. The Transport Committee consists of 9 members—the Chairman of the Standing Committee being a member *ex officio*, and 8 other members elected by the Corporation. Besides these two Committees, the Corporation may appoint Special and Ad Hoc Committees (there are at present four Special Committees in Poona and six in Ahmedabad). The Commissioner is appointed by the Government. The other officers—the City Engineer, Medical Officer, Chief Auditor, Deputy Municipal Commissioner, Assistant Municipal Commissioner, Transport Manager, and Municipal Secretary—are appointed by the Corporation, subject (except in the case of the Municipal Secretary) to confirmation by the Government. Appointments carrying a salary of Rs 400 p.m. and above are made by the Corporation.

**§21. Local Government in other states.** The organization of local government in Bombay State is typical of other states in the Indian Union. Variations in some of the principal states are noted below:

In U.P., municipalities and District Boards consist of elected members and also of some co-opted members, and the President is elected by direct vote of the electors. In municipalities elections are by adult franchise, but the franchise in the Districts is still limited. Elections for Village Panchayats are also by adult franchise.

In Madras, the members of municipalities and district boards are all elected, but the franchise is the same as for the Legislative Assembly of the State. The executive officers of municipalities, called Commissioners, are appointed and

controlled by the Government. Government control over municipalities and district boards is exercised through the 'Inspector of Municipalities and Local Boards', assisted by Regional Inspectors. District Collectors have no powers of control over local bodies, except in emergencies. For Village Panchayats also the franchise is the same as for the State Legislative Assembly. The Sarpanch is elected directly by the voters. The main source of revenue of Village Panchayats is a cess of 6 pies in the rupee on land revenue, and taxes on houses, professions, and vehicles, which are compulsory.

The city of Madras has a municipal corporation.

In Madhya Pradesh, by an Act passed in 1948, the old District Councils (in districts) and Local Boards (in tahsils) were abolished, and they were replaced by Janapada Sabhas, one for each Janapada (which is now the administrative unit, taking the place of the old tahsil or taluq). A Janapada Sabha consists of 20 to 40 councillors, roughly on the basis of one councillor for 10,000 people. The election is by adult franchise. The execution of policies laid down by the Janapada Sabha is in the hands of a Chief Executive Officer, who is a Government servant, and who is assisted by six standing Committees of the Janapada Sabha.

Under the C.P. and Berar Village Panchayats Act 1946, Panchayats were formed by nomination. The Sarpanchas were also nominated by Government. Now Panchayats will be elected by adult franchise, and Sarpanchas will be elected.

There are two municipal corporations in Madhya Pradesh—at Nagpur and at Jabalpur.

In West Bengal, besides District Boards, which are all elected (and which may, with the Government's approval, elect their Chairmen), there are Union Boards, working in subordination to the District Board. A Union consists of a group of villages. The Union Boards are all elected, and have also elective Presidents.

There has so far been no legislation on Panchayats in Bengal, though some Panchayats have been set up by executive orders of the Government.

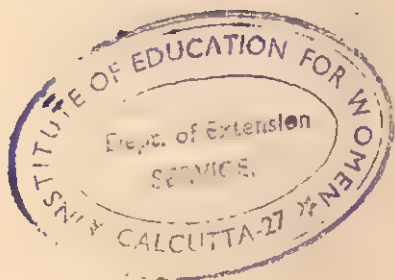
There is a municipal corporation in Calcutta.

§22. **General remarks.** On a general view of our local government so far, it can hardly be said to have been a conspicuous success. The annual reports on the administration of our local bodies are hardly ever without complaints of large arrears of taxes outstanding, often from the councillors themselves, and accounts of municipalities superseded for inefficiency or neglect of duty. Especially of late, as the Planning Commission remark, 'in many local bodies the standards have gone down and new tax obligations continue to be avoided'.<sup>1</sup> Nor need this be matter for surprise or for pessimism. Successful self-government is everywhere a plant of slow growth. The old Indian village community is sometimes unduly eulogized, and it is said that the East India Company deliberately killed that self-governing institution. But the self-governing village community was a product of its times—times when the central government was weak, and powerless to protect the individual. Nor was the village community without its shortcomings. Modern local self-government is different in its nature and purpose from the helpless self-government of the village community, and, as has been said, it can only grow up slowly. With us it has been hampered in the past by want of adequate finance, of adequate guidance from the centre, and of a trained body of administrators. Such a body of administrators, corresponding to the Civil Service in central government, would undoubtedly be a great asset to local government. It has been seen above, for example, that a good deal of the success of the Bombay Municipality is due to its strong executive. As regards central supervision, the need for this was already pointed out, as has been mentioned above, by the Simon Commission. The Planning

<sup>1</sup> *First Five-Year Plan*, p. 139.



Commission also emphasizes the need of inspecting, supervising and guiding the institutions run by local bodies and the services provided by them 'on exactly the same lines and with the same rigour as may be adopted for the State Government's own institutions and services'.<sup>1</sup> Lastly, the finances of local bodies are now being put on a more satisfactory basis, and the Planning Commission has suggested that programmes of development should be conducted as joint enterprises of the State Government and the local self-governing bodies. In every way there seems thus to be a bright future for local self-government in India. One obstacle will still remain: that of local faction, and communalism, and corruption—the effects of the want of real public spirit. If that one obstacle is overcome, the future of local self-government in India will be an assured one.



<sup>1</sup> *First Five-Year Plan*, p. 140.

## CHAPTER VI

# SOCIAL INSTITUTIONS

## MARRIAGE AND FAMILY

§1. **Function of the family.** The family is perhaps the most wonderful institution that Nature and Man have together contrived to create. Its basis is in the bisexual nature of man, and the mutual attraction of the two sexes. But sexual attraction is not by itself sufficient to create the family. Other animals, too, are bisexual and have sexual relations, but they do not, as a rule, found families.<sup>1</sup> Among men, there is not only *mating*, but also *marriage*, which is a union of persons of different sexes, intended to be permanent, and sanctioned by society. And it is marriage that makes the family. What renders a more or less permanent union necessary in the case of man is the plight of the new-born human offspring. The human offspring has a long period of immaturity and helplessness, and requires prolonged parental care. This is readily available from one parent, because mother-love is a natural instinct, and 'the primary association of human beings is that of mother and child'.<sup>2</sup> But the mother alone cannot suffice for the rearing of the child, because child-bearing is an ordeal which is likely to incapacitate her for some considerable time. She must enlist the help and protection of man. Man, on his part, is willing enough to be drawn into the association, because, apart from the needs of sex, he 'must have a female companion who takes care of his house, prepares the food, dresses skins, makes clothes, gathers roots and berries, and. . .

<sup>1</sup> Exceptions are to be found among birds, and certain apes. The constancy displayed by the male and female among certain birds is so exemplary that it has been said that 'real genuine marriage can only be found among birds'.—E. Westermarck, *Marriage*, p. 6.

<sup>2</sup> Sumner & Keller, *The Science of Society*, vol. III, p. 1511.

very frequently cultivates the soil'.<sup>1</sup> Thus man, woman and child come to form a family group, in which man is the lord and master, because his need is less, while at the same time his physical power is greater, than the woman's. The family, in short, is a resultant of the different<sup>2</sup> and complementary characters of the two sexes and their consequent need of each other, and of the necessity of their co-operation in the interest of children. The co-operation takes the form of a division of labour, the male undertaking the protection of the female and the young, and also providing their livelihood, the female devoting herself to care of the young and the household, and also contributing towards the maintenance of the group. Gradually, the group takes on more and more functions, and the relations of its members become more and more refined. It becomes an educative agency, not only in the sense that the children are educated by the parents, but also in the sense that the parents are educated by each other, and, indeed, also by the children. The father comes to develop a new sense of responsibility, and one and all learn the lessons of self-control, and of sympathy and consideration for one another. Then again, as the family live an intimate common life, facing the world as a unit, and experiencing common joys and sorrows, there may grow up among them a community of sentiment and spirit, and 'a relation that began its evolution in crudeness and coercion may refine itself . . . into the highest and most durable of earthly satisfactions'.

**§2. History and different forms of the family.** Some sociologists have thought that, in the earliest stages of human society, family and marriage were non-existent; the relations

<sup>1</sup> Westermarck, *op. cit.*, pp. 10-11. 'The Australian needs a wife for a comfortable life, as a beast of burden, a food-producer, and an unresisting victim of the violent outbursts of passion which he dare not vent upon his male comrades.'—Quoted by Sumner & Keller, *op. cit.*, vol. III, p. 1506.

<sup>2</sup> 'The life-experience, angle of vision, interest and attitude towards life are so different in the sexes that male and female might well be regarded . . . as to two varieties of the same species living in constant mutual presence. . . . It is doubtful whether any man ever understood any woman since the world began.'—*ibid.*, p. 1494.

of the sexes in these early stages were characterized by promiscuity; the children were regarded as belonging to the group, and not to a particular family; and that marriage and family were developed later, through an intermediate stage of group-marriage (marriage of a number of men with a number of women). The family, according to such writers, is the result of male violence: the woman is the first slave. 'Primitive marriage is simply the ownership and enslavement of woman, and the primitive family its offspring.'<sup>1</sup> Other sociologists, on the other hand, maintain that marriage and family are primeval institutions, since they are found even in animals, since sexual jealousy renders the hypothesis of promiscuity improbable, and since no society, primitive or otherwise, that has been observed so far has been found to be without these institutions.

Whatever the truth may be regarding this highly controversial matter, there is no doubt that the family has assumed many different forms at different places and times. Some of these may be noted. There is, first, the difference between the patriarchal, and the matriarchal (or, better, matrilineal) families. In the former, descent and inheritance are through the father; in the latter, through the mother. In a matriarchal society, the father is of little importance, the place of authority being taken by the mother's brother; the husband may live with the wife's family (in which case the marriage will be 'matrilocal', as distinguished from 'patrilocal' marriage, in which the wife goes to live with the husband), or he may pay only occasional visits to her; and the household consists of the mother and her children, and her brother or brothers (but not their children, who will belong to the household of their mothers). Such an organization is still found in some parts of the world. In India it is found in Assam and in Malabar. The patriarchal system is, however, by far more common.

Then there are different forms of the family, corresponding to the different forms of marriage, according to the number

<sup>1</sup> F. Müller-Lyer, *The Family*, p. 107.

of persons composing the two parties to marriage. Marriage of one man to one woman makes the monogamous family; marriage of one man to several women is polygyny;<sup>1</sup> that of one woman to several men is polyandry. Of these polyandry is the rarest, being confined, with isolated exceptions, to Tibet, and to certain parts of South India. The practice has been traced to various causes, such as the disproportion between the sexes (among some polyandrous people the men are known to outnumber the women); or poverty (the difficulty of raising the sum to be paid for a wife may induce brothers or other men to club together and buy a common wife); or the danger that would surround a woman left at home when the husband was away on military or other pursuits.<sup>2</sup> Polygyny is more frequent. It is found in all parts of the world, though everywhere it is the privilege of the powerful and the rich. The part of the world where it flourishes with the greatest luxuriance is Africa, where kings and chiefs are said to have hundreds of wives. A king of Uganda (East Africa) and another of Loango (West Africa) are said each to have had 7,000 wives, 'the high water-mark of polygyny anywhere'.<sup>3</sup> The motives for polygyny are man's desire for variety, or for offspring, or wealth, or prestige. The polygyny of the Hindus is chiefly due to the dread of dying childless. In Africa a number of wives is sought for economic reasons, for the wealth of a chief is derived from the labour of his wives, and also for power, because more wives means more kinsfolk.

Monogamy, however, is the predominant form of marriage in most communities. Centuries of trial and error have established it as the most satisfactory on the whole. It imposes the duty of bringing up the offspring on those who have brought them into being, and who, from natural affection, are the most likely to devote themselves wholeheartedly and with cordial co-operation to that task. It is supported by the

<sup>1</sup> Popularly called 'polygamy', but 'polygyny' is the more accurate term.

<sup>2</sup> E. Westermarck, *Marriage*, pp. 69-70.

<sup>3</sup> *ibid.*, *Marriage*, p. 60.



human feelings of possessiveness and jealousy and it represents a higher regard for the feelings of the weaker sex, and therefore a higher civilization.

**§3. Exogamy and endogamy.** Marriage regulations refer not only to the *number* of persons who may enter into a union, but also to their *status*. All communities prohibit unions between near relatives, though the details of these prohibitions often vary, marriages which are prohibited among certain communities being allowed, and even favoured, among others. For example, among Mohammedans a man marries by preference the daughter of his father's brother, whereas this is forbidden among many other people. Among Hindus, persons belonging to the same *gotra* or clan cannot marry. These rules, according to which a person cannot marry within a certain group, are called rules of *exogamy*. There are other rules by which one cannot marry outside a certain group: they are called rules of *endogamy*. Exogamy and endogamy are like two circles, an inner and an outer: one cannot marry *within* one circle (the exogamous group), and *outside* another (the endogamous group). The Hindu castes are endogamous groups. Differences of race, religion, or class have at various times kept people apart, and made them into more or less strict endogamous groups, and do so even now. Owing to the greater contact of people in modern times, however, there is a tendency for these barriers to disappear. 'Largely originating in racial or national antagonism, class pride, or religious intolerance, the endogamous rules have, in turn, helped to keep up and strengthen these feelings, whereas frequent intermarriages must have the opposite effect. If the men of a country made it a rule to marry foreign women, there would probably be more peace on earth—though, perhaps, less peace in the family.'<sup>1</sup>

**§4. Religious factor in marriage.** In all societies marriage is celebrated with certain rites. The most general social object of such rites, says Westermarck, is to give publicity to the

<sup>1</sup> Westermarck, *Marriage*, p. 20.

union. There is also the religious motive of giving the union a sacramental character. Most rites have a symbolic character, e.g. the joining of the hands of the bridal pair or the tying together of their garments which symbolize the binding character of the union; the scattering of rice or other cereals, which symbolize fruitfulness, etc.

In modern times marriage is being dissociated from religion and becoming a purely civil act. The first step in this direction was taken in France in 1791, after the Revolution. Since then civil marriage has gradually spread to other civilized countries.

**§5. Changes in family life.** What is going to be the future of the family? Great changes seem to be coming into it in recent times. For ages, the family has been dominated by Man. Woman has been under tutelage, in the West as in the East. According to ancient Teutonic law, we are told, a woman could never be independent, but must always be under tutelage to father, husband, or son<sup>1</sup> (which reminds one of a celebrated passage in the 'Laws of Manu'). 'At the Synod of Macon in A.D. 585, the assembled bishops debated with much earnestness whether women were human beings, and finally concluded that they were.'<sup>2</sup> This conception of 'man the master' continued up to the eighteenth century. Chateaubriand, the French author (1768-1848) 'declared that his mother, his sisters, and himself were frozen into statues in his father's presence, and only recovered animation when that presence was removed'. Women continued to be more or less secluded: 'No respectable woman of high or moderate social position would have thought of crossing the street unless accompanied by a servant.'<sup>3</sup> The educational counterpart of this system was the doctrine of the rod; and 'the main aim of domestic discipline and child nurture . . . was to break the child's unruly spirit and accustom him or her to instant and complete obedience'.<sup>4</sup>

<sup>1</sup> Müller-Lyer, *The Family*, p. 223.

<sup>2</sup> *ibid.*, p. 228.

<sup>3</sup> *ibid.*, p. 239. The reference is to conditions in Germany.

<sup>4</sup> *ibid.*, p. 237.

A change came at the end of the eighteenth century, largely because of the Industrial Revolution, and it is in progress even now. The Industrial Revolution destroyed the family as a productive unit. Before the Industrial Revolution the home was often the workshop, and women and children worked along with the men. Many of the needs of the family—the making of clothes, preparation of food, and washing, for example—were provided within the home. The Industrial Revolution meant 'cheap, specialized, machine production, and this rendered domestic labour no longer economic. The tendency set in to do less and less at home, and to buy more and more outside.<sup>1</sup> Women, unable to contribute to the support of the family in the old way, had to look to new ways, and to turn more and more to the office and the factory. But these new ways have affected the family in more than one respect. In the first place, work in the office or factory is not easily compatible with the rearing of children. This has had its effect on the size of the family. Secondly, the new occupations have tended to make the woman economically the equal of the man, and therefore to undermine the 'authoritarianism' of the old family. These tendencies have been reinforced by two other things:—the new knowledge of biology and of contraceptive methods on the one hand, and social thought on the other. The former has freed woman from incessant, involuntary maternity, and facilitated the reduction of the size of the family; the latter has strengthened her claim to equality. Woman has, in consequence, begun to 'differentiate',—to pursue different avocations according to taste, instead of being confined to one undifferentiated routine of domestic labour and motherhood. And the family seems to be undergoing a transformation. Not only does it tend to shrink in

<sup>1</sup> 'There is less washing done at home, and more at laundries. There is much less bread baked at home than there used to be. There is even less cooking done in the home than there used to be, and more at canteens and popular restaurants.'—Sir W. H. Beveridge, *Changes in Family Life*, p. 69.

size; but facility of divorce<sup>1</sup> tends to make it unstable; owing to conditions of city life it is losing its place as the centre of social life and social entertainment, the restaurant and the club usurping that place; and in the education of children it is being superseded by the state, by means of nursery schools and child welfare centres.

§6. **Future of the family.** Whither is this development tending, and is it going to end by destroying the stability of the family? Some people would welcome such a consummation. If the family loses its hold of the education of children, this, they say, is as it should be; the trained teacher can look after the child better than the ignorant mother, and the kindergarten school is a better environment for the child than a congested one-room tenement in a slum area. And when the education of children has been taken over by the state, the reason for a more or less permanent family union disappears: man and woman need not then continue the union longer than they wish to, and each would be at liberty to form a fresh union. The family would thus, it is claimed, be freer and purer than at present, a real union of two hearts, and not the sham, the cage, it often is at present. And society would also gain; for men and women would, under the new system, be free to devote themselves whole-heartedly to their work, whether in the economic, political, or cultural field, without being hampered by any 'sinister interests', any narrow views of family advantage.

It is an attractive picture, but not quite mindful of the other side. It is doubtful if official conscientiousness can ever be a satisfactory substitute for the warmth and good cheer of the family circle. For as Aristotle long ago pointed out against Plato's proposal for the abolition of the family, affection in such circumstances would be watery, and what is common to all is neglected by all. And the freedom which is supposed to accrue from unstable marital relations is no

<sup>1</sup> 'Divorce affects almost one-third of all marriages in the United States today.'—Maciver & Page, *Society*, p. 242.

real freedom: it has no tendency to lead the individual to make the best of his capacities, but rather the reverse. This has been perceived even in Russia, where the new tendencies have had their widest application in modern times, but where opinion has now come round to stability in family relations.<sup>1</sup> Moderate reform of the family—removal of its harshest and most iniquitous features, without threatening its stability—seems, therefore, to be the call of wisdom.

**§7. Family and the State.** As marriage is not merely a union of two persons of different sex, but such a union recognized and approved by society, society—or the state as agent of society—has always regulated marriage. Some of these regulations—e.g. prohibition of marriage between near relations, or between persons *within* a certain group or *outside* a certain other group (exogamy and endogamy)—have been mentioned already. These rules are based on ideas of eugenics (though whether these ideas are scientifically valid or not is another matter). In most modern civilized countries the law requires a certain minimum age for marriage (this is 16 under English law); monogamy is the only recognized form; the wife has equal status with the husband in matters of property;

<sup>1</sup> In *Soviet Communism* (pp. 1054-7), Mr and Mrs Sidney Webb thus describe the change of opinion in Russia:

'In the first decade after the Revolution there was a general understanding that sexual intercourse was a personal matter taking place by mutual consent between men and women of the same or different races, colours, or religions, for which no ceremony was required, while even official registration of the union was entirely optional. But sexual intercourse might entail social consequences, involving special obligations (such as provision for offspring) which the law should enforce. On the same principle, divorce was as optional as a registered marriage.

'In the second decade there was a gradual change of attitude. Lenin had never sympathized with the licentiousness of the first years of the Revolution. . . . Lenin's views have prevailed and in the Communist party sexual promiscuity, like all forms of self-indulgence, has come to be definitely thought contrary to Communist ethics, on the grounds enumerated by Lenin: it is a frequent cause of disease; it impairs the productivity of labour; it is disturbing to accurate judgement and inimical to intellectual acquisition and scientific discovery. . . . Disloyalty in marital relations and even exceptional instability have become definite offences against Communist ethics, leading not only to reprimands, but also, in bad cases, to expulsion from the party.'



and divorce is permissible under certain conditions. With us, according to the Hindu Code Bill now under consideration by Parliament, the minimum age for marriage will be 18 and 15 (for men and women respectively), only monogamous marriages will be recognized as legal, and there will be provision for divorce under certain conditions.

**§8. The family in India.** The family in India is changing, and seems destined to further change, in the wake of Western countries. The joint family has continued for centuries in India. It is an extension of the natural family: the grown-up son does not leave the father's house, but continues to live with his parents, so that this extended family comes to consist of a man and his wife, their children, and the children's children. The group is 'joint in food, worship, and estate'. Whatever is earned by any member is thrown into the common stock, from which everyone draws according to his need, subject to the control of the head of the family. A strong sense of kinship, and community of worship—the worship of the *pitrs* or ancestors, among others—contribute to hold the group together.

The joint family has survived longest in India, and is sometimes spoken of as a peculiarly Indian institution. It has however, obtained among many other peoples.<sup>1</sup> It seems to arise and flourish where the State is weak (and where, in consequence, groups based on some other principle, e.g. kinship, are strong), and where economic occupations are not much diversified. When these conditions pass away, the joint family tends to break up. A strong government breaks up subordinate groups, and takes the individual under its protection. This is what happened in Rome: 'the development of the Roman State implied limitation of the *patria potestas*'.<sup>2</sup> This is also what is happening in India. The tendency of legal administration under the British Government was unfavourable to the

<sup>1</sup> Sir Henry Maine, *Early History of Institutions*, and *Early Law and Custom*.

<sup>2</sup> Müller-Lyer, *op. cit.*, p. 198. *Patria potestas* means the absolute authority of the father over the family.

joint family; economic developments have brought it about that different members of the family should seek their livelihood in different places; and the spirit of individualism is in the air, prompting each man to live his own life in his own way. All these things are dissolving the old family system. In this process there is bound to be loss as well as gain. The old system had a fine side: it made provision for the bringing up of the young, and the maintenance of the old and the infirm; it secured the advantages of a simple division of labour, each member having work suited to his capacity; it could effect economies in living, making a little income go a long way; finally, it inculcated habits of co-operation, and taught respect for authority and order. On the other hand, in common with all authoritarian systems, it checked independence and initiative, and it also put a premium on idleness.

The break-up of the joint family is the first change which the Indian family has undergone for a long time; with the industrialization of the country, further changes, on the lines of those in the West, may be expected. We seem to be in their midst already.

### PROPERTY

**§9. Meaning of property.** The right of property is the right of a person or group of persons to the exclusive use or possession of a certain thing. The ground for the recognition of such a right is that a certain assured command over material goods is necessary if a man is to live a purposeful life—to express his ideas of what is beautiful, or to give effect to benevolent wishes. Without such command, he may indeed live from day to day, as animals do, but he cannot live with security, or live purposefully, and realize a *scheme* of life. Property is thus an instrument of an ordered life of purposeful activity, an instrument, we may say, of freedom.

But the material goods which are necessary for human life can only be produced by labour. If that labour is to be enlisted in the work of production, society must hold out

some bait to it. Property is that bait. In order to call out the productive capacity of the worker, society gives him exclusive use of the product of his labour (or, since in modern society the product of each individual worker is not easily distinguished, what is *taken* to be the product of his labour); it allows him to transfer his property to others; and even to dispose of it after his death (though this right is sometimes subject to limitation).

The right of property is thus necessary, first, because without it the individual would not be able to live a free life, and secondly, because without it the production of goods could not be maintained. The difficulty of the problem of property arises from the fact that these two principles do not always run parallel—that the distribution which would seem to be dictated by the needs of the individual would not always lead to maximum production, and vice versa.

**§10. Its limits.** It is clear, at any rate, that there is no absolute right of property. Like all rights, the right of property rests on social recognition, and is limited by social convenience. An exclusive command over one's property does not imply a right to use it in such a way as to be a nuisance to others. So too, if the conditions of property-holding at any time are such as to make a decent life impossible for large numbers of the population, no 'sacred right of property' may stand in the way of the State taking steps to redress the balance and secure the general good. For 'it is the State which alone enables property to be gathered and held; and there is no legitimate claim which property can make against what appears to be the welfare of the State'.<sup>1</sup> At the same time, of course, it must be a genuine consideration of the true and ultimate general good, and not merely some need of the moment, that should determine the action of the State.

**§11. Evolution of property.** Grossly unequal property-holding, dividing the country into 'two nations', and calling for action on the part of the State, is a peculiar malaise of

<sup>1</sup> *Property: Its Duties and Rights* (Macmillan), p. xvi.

modern times. Primitive man knew nothing of it. The communism of primitive man has been exaggerated; still there is undoubtedly a good deal of it. A man's clothing, weapons, and tools, a woman's ornaments, the family hut or cave, or at least a marked portion thereof, are from the first private property.<sup>1</sup> But most other things, especially food, are shared by the group. Thus among the Gilyaks, a Siberian people, 'the catch after fishing is freely divided among the members of the community, even families which have taken no part in the work receiving a share'.<sup>2</sup> In Fiji there is a custom called *kerekere*, whereby persons may take the property of others, to such an extent that it has served as an effectual bar to the adoption of European methods of trading. A Fijian who sets up as a trader is liable to have his goods appropriated by anyone who comes into his store, to such an extent as to make his success impossible.<sup>3</sup> Land, too, is in the earliest—the hunting—stage, generally the property of the group. Even when agriculture begins, land is at first the common property of the group, but plots may be assigned to separate families for cultivation for the year. Thus there is temporary private occupation and permanent common ownership. In course of time, however, people come to have a vested interest in their plot, the temporary occupation becomes permanent, and permanent occupation of the same plot hardens into ownership. Vestiges of the common ownership may remain in the common rights over waste or pasture, and at times in the necessity of the community's consent for alienation.

When private property in land has been established, and the community has been settled on the land, inequalities of wealth arise in course of time. One family may thrive while another decays. Debtors, unable to pay their debts, may become the slaves of their creditors. A similar fate may overtake prisoners of war. One community may be conquered by

<sup>1</sup> *Property: Its Duties and Rights*, p. 11.

<sup>2</sup> *Encyclopaedia Britannica*, 14th ed., vol. XVIII, p. 585.

<sup>3</sup> W. H. R. Rivers, *Social Organization*, p. 107.

another, which may then appropriate the property of the former, and turn them into slaves. Within the community military necessity may elevate the chief and his followers into a nobility standing above the others.<sup>1</sup> Thus property and power enforce each other, property leading to power (e.g. in the case of debt-slavery) and vice versa. Thus it is that the right of property, which finds its justification in being an instrument of freedom, may turn into an engine of oppression, or at least of power.

While the right of property is thus always liable to turn into an evil, it had never, until recent times, become the burning problem it is now. The change is due to the Industrial Revolution, which began in England in the latter half of the eighteenth century, and has since spread to other countries. The essence of that Revolution was, and is, the use of power-driven machinery for production. Production becomes large-scale, and therefore cheaper. The small-scale producer, working at home with his own raw material, and his own tools (e.g. a handloom), cannot compete with the machine, and has, after a longer or shorter struggle, to succumb before it. (In India the handloom weaver is still struggling, with some help from the Government.) In so far as machinery cheapens production, it is, in spite of the distress it may cause to the small producer, a gain to the community. But there is a dark side to it. Machinery requires a great deal of capital, and its advent means that production can only be carried on by those who can command big capital. A divorce comes about between Labour and Capital. The labourer loses control over the means of production, and must wait on the pleasure of the capitalist, who owns those means, submit to the discipline of the factory, and accept any conditions of work the capitalist may dictate, because the alternative to acceptance is starvation. And in the early years of the Industrial Revolution these conditions were appalling. Since then an awakening social conscience, and

<sup>1</sup> *Property : Its Duties and Rights*, p. 18.



agitation on the part of the workers themselves, have moved the State to procure better conditions for Labour. These efforts, however, have not gone very far in solving the problem, which lies in the division of society into two parts—a few rich on the one hand, and vast masses of discontented people, leading a precarious, hand-to-mouth existence, on the other. Various solutions are in the air, and the very institution of private property has come under fire.

**§12. Criticism of the institution of Private Property.** If the property arrangements of society result in virtually depriving the great majority of people of the right of property—because those who live from hand to mouth can hardly be said to possess property—there must be something wrong in these arrangements. And the wrong must be in an unequal distribution of the product between Labour and Capital. Capital is sterile without Labour, and Labour is lame without Capital. The product is the joint creation of the two. But there is no standard to determine how the product should be divided between them. The champions of Labour contend that it does not get its fair share, and is exploited by Capital. They go further, and look into the pedigree of Capital. How is it that large masses of capital come to be accumulated? They can be traced to two sources: (1) inheritance and bequest, (2) unearned increment. Some persons come into a great deal of property simply because they are the sons of their fathers. Others become rich not because they have done anything to deserve it, but simply through the progress of society, or through some unforeseen contingency. (Land will rise in value simply through increase of population; a new railway line will bestow value on some utterly waste land through which it may happen to pass; a war may break out, cutting off imports of some article of everyday use, and those fortunate traders who happen to possess stocks of the article will become rich overnight.) Such profits, the critics urge, ought to come to the State. Their accrual to private persons cannot be justified on the principle of property, which concedes the right

of a person to things which he has earned, but not to things which have been earned by others, or which are due to the progress of society.

Above all, the critics suggest, no private property should be allowed in the means of production. Private property should be for *use*, not for power over the lives of others.

All these suggestions are useful up to a point. Questions about property are, however, essentially questions of limits. The State can enforce minimum wages and other conditions favourable to labour, but if it goes beyond a certain limit, capital will not be drawn into production, and that will not be in the general interest. So also, the State can levy a tax on inheritance; but the suppression of the right of inheritance would, in the first place, deter men from putting their best into their work—because men work, not for themselves only, but for others who are near and dear to them—and, in the second, lead to the squandering and dissipation of property during the life-time of the owner.<sup>1</sup> There is a stronger case for the confiscation of unearned increment or of profits from contingencies, but even here a line has to be drawn between unearned increment or profit from contingencies on the one hand, and the reward of intelligent anticipation and taking of risk on the other. Lastly, there is a limit to the socialization of the means of production. If all instruments of production are to be nationalized or syndicalized (i.e. placed in the hands of groups or corporations), and private property allowed only for use, not for profit, will there be sufficient incentive to work? The answer that is usually given is that the best work is done not for the material reward, but from a sense of duty and for love of the work; also that these higher motives for work will come increasingly into play under Socialism, because workers will feel that they are working for the community, and not for enriching some capitalist. Actual experience of nationalized concerns, however, does

<sup>1</sup> Sumner & Keller, *The Science of Society*, vol. I, p. 347.

not bear out these contentions, and one may well feel hesitant about accepting them. The unfortunate truth, indeed, seems to be that most people are quite as lazy as they dare to be.

**§13. Medievalism.** Another idea, which is apt to strike the unsophisticated and sensitive mind as providing an easy solution of the difficulties created by the Industrial Revolution, is to turn away from the evil thing altogether, to discard the use of machinery, and to return to the simple methods of the Middle Ages, or at least of the pre-Revolutionary times, which are pictured as times of happiness and contentment. This was the view preached, on the very morrow of the Industrial Revolution, by the historian-economist Sismondi (1773-1842), and it has found other exponents since then. In India this doctrine has been preached by Mahatma Gandhi. Two considerations, however, weigh against this view. (i) In the first place, we must remember that machinery has multiplied production, and brought many commodities, which had formerly been luxuries consumed only by the rich, within reach of the masses. Poverty, sweating, bad housing, have not been created by machinery : economic historians have shown that they existed, though on a smaller scale, even before the Industrial Revolution.<sup>1</sup> (ii) Secondly, in an age of competing nation-states, the nation which lags behind in the use of the most economical methods of production is sure to lose the race. Machinery is power, and the nation which uses the most efficient machinery will have an advantage over one which does not. Mahatma Gandhi's teaching is consistent, and emphasizes non-violence along with the avoidance of machinery. The two are indeed intimately connected, and those who realize that the day when force can be eliminated from the dealings

<sup>1</sup> 'Most of the troubles of which factory workers complain today were known to the English workers of the early eighteenth century.'—P. Mantoux, *Industrial Revolution in the Eighteenth Century*, p. 72; see also p. 422. 'The housing conditions even in the most rural districts were not much better than the urban conditions in many respects.'—A. Redford, *Economic History of England, 1760-1860*, p. 59.

between nations has not yet arrived will hesitate to abandon the use of machinery in their economic life.

The best plan would seem to be to accept the achievements of the Industrial Revolution and to go forward in the course which the State has taken in many countries; to socialize whatever industries are ready for socialization, and for the rest to regulate private enterprise without destroying it, and to use taxation for redistributing property and to give benefits to the poor. A great deal has been done in this direction during the last century, and it may be possible to do more.<sup>1</sup> A programme of this kind will go a long way towards the establishment of true equality, which consists in providing equal *opportunities* for everybody (to the one who, in Professor Laski's words, has not been careful in choosing his parents, as well as the one who has been). And the provision of equal opportunities is about as much as we can do for the realization of a just social order.

### CASTE AND CLASSES

**§14. Strata in society.** The structure of every society, above the most primitive, may be conceived as consisting of a number of horizontal layers or strata. Each layer or stratum consists of men with a certain manner of life, education, occupation, and economic status, and who command, and are conscious of commanding, a certain social estimation because of these. Such strata are in modern Western societies called 'classes'; in medieval Western society they were known as 'estates'; in Hindu society they take the form of 'castes'.

**§15. Meaning of class, estate, caste.** Class, estate, and caste are all alike in certain respects, while differing from one another in others. They are alike inasmuch as they all stand for the solidarity of the group, and its distinction from other groups. Within each group there is a fundamental equality which overrides minor differences, but between the different

<sup>1</sup> The Beveridge Plan in England sets up a model in this respect.

groups there is a gap which can only be bridged with difficulty, if at all. They are alike, again, from the importance of birth in their determination, though this varies, being greatest in caste and least in modern classes. On the other hand, there are differences among the three. There is this difference between the medieval estates and the modern classes, that the former were recognized by law, unlike the latter. In the Middle Ages, the nobleman, the priest, the merchant, the peasant—each had his own rights and duties recognized by law and custom. In modern times the aristocrat, the bourgeois, the working man, are all equal before the law. Again, though neither medieval estates nor modern classes were or are rigid divisions, the former were more rigid than the latter. Individuals occasionally rose higher in the social scale, but in the main each estate was self-recruited. England was more homogeneous than other countries, and younger sons of noblemen counted there as commoners; but in other countries, e.g. France or Germany, all the sons of a nobleman were noble. In modern classes, on the other hand, 'there is considerable movement up and down the social ladder, and there are so many intermediate strata that their precise limits are difficult to determine'.<sup>1</sup>

Both estate and class differ from caste, first because of the rigidity of the latter, and secondly because of its association with religion. Medieval estates were, as remarked above, rigid, but never so rigid as castes. And though they were recognized by law, they were not sanctioned by religion. As a result, when European society outgrew the system of estates, these could be modified with comparative ease. What is sanctioned only by secular law can be more easily changed than what has the sanction of religion. And in caste religion has carried the spirit of exclusion to the extreme point. Not only must one not marry outside the caste, but there are restrictions in relation to food, and even contact. In Malabar, 'a Nayar may not approach within six paces of a Nambutiri Brahmin;

<sup>1</sup> M. Ginsberg, *Sociology*, p. 167.



a man of the barber caste not within twelve paces; a carpenter or goldsmith not within twenty-four. For a Tiyyan the distance is thirty-six; for a Mayayan sixty-four; and for a Polayan ninety-six paces'.<sup>1</sup>

§16. **Origin of social differentiation.** What is the origin of this stratification of society? We can only guess at the causes. Primitive society is equalitarian, and there are hardly any differences of status. It is war and military organization, perhaps, that make a change. Hereditary chieftainships arise or are strengthened, and the relatives of the chief or king become noblemen.<sup>2</sup> At the other end of the scale, too, war and conquest give rise to slavery and serfdom. Religion and industry introduce other differences. The priesthood in early society generally forms a distinct class, and men pursuing the same occupation tend to be endogamous, and to marry within their own group.<sup>3</sup> Lastly, differences in wealth, too, lead to differences in status, and do so increasingly in modern times.

§17. **Principal features of the caste system.** In India social stratification has, through caste, been carried to lengths unparalleled elsewhere. Hindu society is divided into about 3,000 castes, and each of these is segregated from every other by restrictions with regard to marriage, food, and sometimes (as mentioned above) even personal contact. Three other features are usually associated with caste, viz. (i) hereditary occupation, (ii) hierarchical character, and (iii) sanction of religion. Each caste has a certain traditional occupation; there is a certain precedence among castes, some ranking higher, some lower, the Brahmin being highest of all; and the whole scheme finds a sanction in religion. A person's caste, and therefore his station in life, his occupation, the people with whom he may associate and among whom he may

<sup>1</sup> Rivers, *op. cit.*, p. 153.

<sup>2</sup> *ibid.*, p. 143.

<sup>3</sup> Rivers, *op. cit.*, p. 151. Müller-Lyer (*History of Social Development*, p. 212) looks upon differentiation of occupations as the result, rather than the cause, of class distinctions. This, however, would not prevent occupation leading to further class distinction later on.

marry, are all determined for him by birth; and the law of *karma* reconciles him to this. The system is therefore rigid in the extreme, and it is this rigidity that distinguishes it from a system of classes or 'estates' or from the 'gilds' of medieval Europe. The gilds were occupational groups; their membership was largely hereditary; and they tended to be endogamous, partly because of the natural fellow-feeling among men pursuing the same occupation, and partly from a desire to guard their trade secrets. The gilds, however, did not become as rigid as castes.

Caste, too, it is sometimes said, is not as rigid as is commonly supposed: 'It appears at first sight to be fixed and immobile, but on close examination is found to be plastic and fluent.'<sup>1</sup> It is true that changes have taken place, and do take place even now, in castes. When a caste is prosperous beyond its neighbours, it wishes to rise in the caste-scale, and may succeed in doing so. On the other hand a caste may fall through the adoption of some occupation supposed to be low. Such changes, however, are rare; they do not occur among the higher castes; and they are not made consciously.

Of all the features of caste, endogamy is the most important. The others are ancillary; they may exist in greater or less degree; they are like outworks, which support the main structure; but the essence of the system is endogamy. Occupation, for example, though usually associated with caste, has never been an essential part of it. Colebrooke wrote in 1798: 'Daily observation shows even Brahmins exercising the menial profession of a Sudra. . . . It may be received as a general maxim that the occupation appointed for each tribe is entitled merely to a preference. Every profession, with few exceptions, is open to every description of persons.'<sup>2</sup> An examination of caste-names, too, reveals that not all of them are based on occupation. There are, besides the 'occupational' or 'functional' castes, tribal castes—communities which were originally

<sup>1</sup> Radhakamal Mukerjee, *Civics*, p. 46.

<sup>2</sup> Quoted in *Encyclopaedia Britannica*, 11th edition, vol. V, p. 465.

independent tribes, but were turned into castes on entering the fold of Hinduism. Such, for example, are the Jats and the Gujars of the Punjab, or the Kolis and Mahars of Bombay. Other castes are sectarian, such as the Jati Vaishnabs of Bengal, or the Lingayats of Bombay. At first adherents of a sect, these in course of time forgot their original social distinctions and formed a new endogamous group. Other castes, again, have been formed by crossing. But whatever the origin of a caste, it is a caste because it has adopted the peculiar caste organization, and the most important element in this is endogamy.

**§18. Origin and functions of caste.** The origin of the caste-system is enveloped in obscurity, and we can only form conjectures about it. An incipient differentiation of functions divided the Aryan immigrants into India into three classes—Brahmin, Kshatriya, and Vaishya. This, however, seems to have been a system of *classes*, not of rigid, exclusive *castes*. Exclusiveness seems to have been the result of conquest, and to have arisen first in relation to the conquered, and then to have spread to the conquerors themselves,<sup>1</sup> and to have reinforced the natural tendency—which exists at all times, and is particularly strong in early times—for the son to follow the occupation of his father. Reverence for the class who could propitiate the gods, and who could chant those prayers which had led the community to victory, must have led, in this stratifying society, to the supremacy of the priesthood; and ideas of cleanliness probably determined the rank of each new occupation which arose, and therefore of the caste that pursued it. Difficulties of communication no doubt contributed to keep dispersed communities isolated from one another, and ‘the lack of rigid unitary control of the State, the unwillingness of the rulers to enforce a uniform standard of law and custom’<sup>2</sup> allowed each group to become autonomous, to set up as an *imperium in imperio*. Finally, the law of *karma* came in to explain why a person’s position in life should be determined by birth.

<sup>1</sup> See P. V. Kane, *History of Dharmasastra*, vol. II, part i, p. 48.

<sup>2</sup> G. S. Ghurye, *Caste and Race in India*, p. 147.

Caste has in the past played a great and necessary part. In early days it was probably the only method by which people of different cultures and colours could be brought into one system. Later on it did the same work as the gild of medieval Europe. It was a system of division of labour, of conserving technical skill, of assisting and protecting the individual worker. Its beneficent work in this respect has been well put in an oft-quoted passage:

There is no doubt that it is the main cause of the fundamental stability and contentment by which Indian society has been braced up for centuries against the shocks of politics and the cataclysms of Nature. It provides every man with his place, his career, his occupation, his circle of friends. It makes him, at the outset, a member of a corporate body: it protects him through life from the canker of social jealousy and unfulfilled aspirations; it ensures him companionship and a sense of community with others in like case with himself. The caste organization is to the Hindu his club, his trade union, his benefit society, his philanthropic society.<sup>1</sup>

§19. **The future.** The conditions which necessitated the exercise of these functions by caste have, however, now passed away. The Hindu has now other clubs, and trade unions, and benefit societies. He is no longer content to have his 'place, his career, his occupation, his circle of friends' provided for him. Custom is no longer king. *Karma* no longer reconciles men to their position. There are schools and colleges to provide instruction of various kinds. A strong and popular government is prepared to protect the individual, and promote his welfare. Easy communication brings men of different castes together. All the various buttresses of the caste system—the rules with regard to food and personal contact, hereditary occupation, ideas of 'high' and 'low', and old religious conceptions—have thus disappeared or are disappearing, and caste is now an undefended citadel. It is, moreover,

<sup>1</sup> Sidney Low, *Vision of India*, quoted in *Encyclopaedia Britannica*, 11th edition, vol. V, p. 465.

realized that caste is inconsistent with nationalism, and must go, if the larger idea is to be realized. 'The institution necessarily tends to hinder active hearty co-operation for any purpose, religious, political, or social. . . . Further, it fosters intense class pride, fatal to a feeling of brotherhood between man and man.'<sup>1</sup> If caste still subsists, and the only feature of it which subsists with almost undiminished vitality is endogamy, this is partly because education is still not general, partly because centuries of its continuance has tended to give each caste a separate culture, and partly through sheer inertia. It is true that there has been a certain revival of caste spirit in recent times,<sup>2</sup> but the deeper trends are against its continuance. That caste is destined to go, sooner or later, seems to be beyond doubt.<sup>3</sup> Whether it will be sooner or later depends on the Hindus themselves.

It is sometimes asked what will take the place of castes when the latter disappear. The obvious answer is that classes, like those in Mohammedan and Western society, will take the place of castes.

The classes in modern Western society are broadly the result of economic status, and as that status comes to correspond more and more with native capacity, and is less and less determined by mere birth, class differences may be expected to lose much of their bitterness. Whether, however, a classless society could ever be achieved, and whether if it could, it would be desirable, is doubtful, because men are, in the first place, born with different endowments, and further because the desire to rise in social status acts, and ought to act, as a healthy stimulus to individual effort.

<sup>1</sup> Vincent Smith, *Oxford History of India*, p. 40.

<sup>2</sup> Ghurye, *op. cit.*, pp. 176-9.

<sup>3</sup> Professor Radhakamal Mukerjee thinks (*Civics*, pp. 56-7) that 'caste, which has adapted so many ideas to its service, may absorb the nationality idea as well'. The idea seems to be that the existing castes may be replaced by bigger units, so that Gujarati, Deccani, Hindustani, etc. may be the castes of the future. We may call this 'adaptation' of caste if we like, but it is indistinguishable from disappearance.



## APPENDIX

### THE SCOPE OF CIVICS

Civics is a very recent subject of study. According to the Oxford English Dictionary, the earliest use of the word is so late as 1887. It is not a matter for surprise, therefore, that being 'a subject still in the making',<sup>1</sup> it should be groping, as it were, for its exact boundaries. An enthusiastic teacher of the subject, who has just been quoted, has said that 'among ordinary citizens only vague notions prevail as to its content'.<sup>2</sup> It is not only among ordinary citizens, however, but also among writers and teachers, that vague and various notions seem to be prevailing on the scope of the subject.

The Oxford English Dictionary defines Civics as 'that part of political science which is concerned with the rights and duties of citizenship'. This would not be a bad definition, because 'Civics', as has been mentioned already, comes from the Latin word *civis*, meaning 'citizen', so that 'Civics' may naturally mean 'study of citizenship', or, 'study of the rights and duties of citizenship'. Understood thus, however, Civics would take away a large and not the least important portion from the ground occupied by political science. In Sir Ernest Barker's words, it would be 'a part which looks terribly like the whole; for when you have dealt with the rights and duties of citizenship, you have laid the foundations and built the ground floor, and the rest is just superstructure'.<sup>3</sup>

But the practice of textbook writers and university syllabuses does not confine itself to the 'rights and duties of citizenship'. On the contrary, anything from personal hygiene to the Federation of the World or the City of God may be included in 'Civics'. Whatever knowledge or information may be thought necessary for the citizen has come to be thought proper to be treated of in a book on 'Civics'. 'Civics' has come to be not a study of the rights and duties of citizenship, but all knowledge necessary for the exercise of those rights and duties. It has become, in short, 'education for

<sup>1</sup> E. M. White, *The Philosophy of Citizenship*, p. 34.

<sup>2</sup> *ibid.*, p. 35.

<sup>3</sup> E. Barker, *Education for Citizenship*, p. 7.

citizenship'. The language used by some writers on the subject brings out the large claims they make for it. Thus, according to Miss White, 'Civics is the subject that deals with everything appertaining to citizenship';<sup>1</sup> again, 'the aim of Civics is [not only] to give knowledge of the institutions of society and their growth';<sup>2</sup> it extends 'to all that appertains to citizenship, and embraces a knowledge of the main factors in the story of civilization'.<sup>3</sup>

Some of the chapter and section headings in an American textbook will show the wide variety of topics dealt with in 'Civics':

### The School Community

- A Why we go to school
- B How our schools came to be
- C Support and control of our schools
- D The good citizen in the School Community

### The Church in Community Life

### Health and the Community

- A The importance of being well
- B The old and the new way of looking at disease
- C Closing the roads of infection

### Play and Recreation

### The Unfortunate Members of the Community

- A The Blind and the Deaf
- B The Poor and the Needy
- C The Feeble-minded and the Insane

### Wealth: Its Production and Use

### Communication: How America Talks and Writes

### Transportation: How America Rides

### Some Labour Problems

etc., etc. . . .

According to the writer on 'Civics' in a recent edition of the *Encyclopaedia Britannica*,  
 "Civics" embraces much more than a study of...  
 structures and functions [of governmental institutions].  
 ... It includes public-mindedness; the creation of right  
 attitudes towards public duties; the formation of habits of

<sup>1</sup> White, op. cit., p. 7.

<sup>2</sup> *ibid.*, p. 16.

<sup>3</sup> *ibid.*, p. 35.

helpful, constructive, participating citizenship;... the consideration and application of procedures and processes which will result in the greatest good for the greatest number in all social units, big or little. The more modern textbooks on Civics make the formal study of civil government only a part, and far from the largest part, of their treatment. They teach the essential facts concerning sanitation; personal and community hygiene; fire prevention; care of the water-supply; and a long list of other public activities. Whatever affects the well-being of social co-operative units is considered a part of Civics even more than the purely governmental phases of the handling of such units.<sup>1</sup>

To say that Civics deals with 'everything appertaining to citizenship' (Miss White) or that 'whatever affects the well-being of social units is a part of Civics' (*Encyclopaedia Britannica*) is vague enough.

The following are other definitions from well-known writers:

Professor Patrick Geddes: 'Civics is the science of cities—their origin and distribution, their development and structure; their functioning, internal and external, material and psychological; their evolution, individual and associated.'

This definition appears to be too narrow.

F. J. Gould; 'Civics is the study of institutions, habits, activities and spirit by means of which a man or woman may fulfil the duties and receive the benefits of membership in a political community.'

This again is not very clear.

On the whole, it does not appear that Civics has yet found its exact subject-matter. It seems that different communities will delimit its scope differently, according to their different needs, and that we must wait to see how the contents and the frontiers of the subject are stabilized.<sup>2</sup>

<sup>1</sup> *Encyclopaedia Britannica*, 14th edition, vol. V, p. 734.

<sup>2</sup> In his lecture on Education for Citizenship, from which I have already quoted, Sir E. Barker said that he did not see 'how such a subject is to be composed and constructed' (p. 15).

# TYPICAL QUESTIONS

## CHAPTER I

1. How do you explain the fact that Man alone, of all animals, has been able to develop civilization?
2. 'The individual man owes all he is or has to society.' Explain.
3. How does city life arise? What is its significance in the growth of civilization?

## CHAPTER II

4. Define citizenship. How do you distinguish between a citizen without the franchise on the one hand, and a resident alien on the other?
5. Compare the citizenship of the ancient city-state with that of the modern territorial state.
6. Give an account of the ancient Indian village community.
7. What is a state? What is its place *vis-à-vis* other social groups?
8. Explain the saying that 'Citizenship consists in the right ordering of our several loyalties'.
9. Distinguish clearly the various senses of the following terms :—  
Society, Community, Association, Institution.

## CHAPTER III

10. What is a right? What is the relation between rights and duties?
11. 'Rights are relative to circumstances.' Explain.
12. Is there any advantage in laying down 'fundamental rights' in a written Constitution?
13. How are rights maintained?
14. What do you consider to be the duties of a good citizen?
15. Under what circumstances has the citizen the right to resist the State?
16. Discuss the theory of passive resistance.

## CHAPTER IV

17. Describe the main types of the state.
18. What do you understand by a Constitution ? Explain the value of a written and rigid Constitution.
19. What are the merits, and the dangers, of democracy ?
20. Define a 'political party'. What part does it play in the education of a citizen ?
21. Describe the devices of direct democracy used in modern times, and consider their usefulness.
22. Describe the work of the representative body in the modern state.
23. What are the respective functions of the political, and the permanent, executive ? How is the former related to the legislature ?
24. How is independence of the Judiciary secured in modern states ?
25. What are the chief features of a federation ?

## CHAPTER V

26. What is the value of local self-government ?
27. Trace the main stages of the development of local self-government in India.
28. On what principles would you demarcate the respective spheres of central and local governments ?
29. How would you define the areas of local government units ?
30. Describe the constitution and functions of (a) local boards, (b) municipalities, (c) village panchayats in the Bombay State.
31. On what grounds, and to what extent, would you advocate control of the local by the central government ?
32. How do you account for the comparative failure of local self-government in India ?

## CHAPTER VI

33. What are the functions of the family ? Describe its different forms.

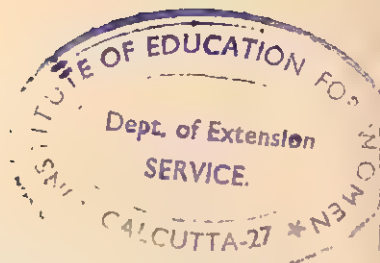


34. Explain 'exogamy' and 'endogamy'.
35. What changes has the family undergone in recent times? How do you account for them?
36. What is meant by the 'joint family'? Account for the disintegration of the Indian joint family in recent times.
37. What is the justification of the right of property?
38. What problems are raised by the right of property in modern times? How would you solve them?
39. What do you understand by social stratification? How does it originate?
40. Distinguish clearly between Caste, Classes and Estates.
41. Discuss the desirability and practicability of a classless society.



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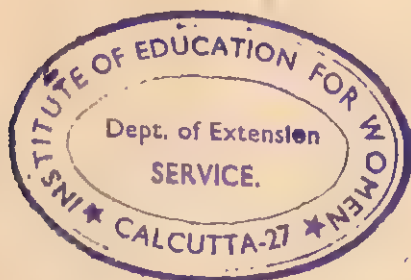
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